

103  
**LEGISLATION TO REGULATE FISHING IN GLACIER  
BAY, ALASKA**

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**Legislation to Regulate Fishing in... THE**

**SUBCOMMITTEE ON FISHERIES MANAGEMENT**

**OF THE**

**COMMITTEE ON**

**MERCHANT MARINE AND FISHERIES**

**HOUSE OF REPRESENTATIVES**

**ONE HUNDRED THIRD CONGRESS**

**FIRST SESSION**

**ON**

**H.R. 704**

**A BILL TO REGULATE FISHING IN CERTAIN WATERS OF  
ALASKA**

**APRIL 28, 1993**

**Serial No. 103-24**

Printed for the use of the Committee on Merchant Marine and Fisheries



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# LEGISLATION TO REGULATE FISHING IN GLACIER BAY, ALASKA

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WEDNESDAY, APRIL 28, 1993

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON FISHERIES MANAGEMENT,  
COMMITTEE ON MERCHANT MARINE AND FISHERIES,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 2:30 p.m., in room 1334, Longworth House Office Building, Hon. Thomas J. Manton [chairman of the Subcommittee] presiding.

Present: Representatives Manton, Unsoeld, Taylor, Lancaster, Young, Ravenel.

Staff Present: Sue Waldron, Jim Mathews, Greg Lambert, Lori Rosa, Mary Beth Beetham, Ashley Evans, Chris Mann, Jim Hoff, Mike Quigley, Jed Brown, Frank Lockhart, Charles Schechter, Jean Flemma, Amy Robins, Harry Burroughs, Cyndi Wilkinson, Judy Alvarez, Ed Lee, Jill Brady, Julie Roberts, Margherita Woods, Laurel Bryant.

## STATEMENT OF HON. THOMAS J. MANTON, A U.S. REPRESENTATIVE FROM NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES MANAGEMENT

Mr. MANTON. Ladies and gentlemen, we will get started. I would ask the witnesses to come to the witness table. Identifying the witnesses for the record, we have John Morehead, Regional Director, Alaska Region, National Park Service; on Mr. Morehead's left, McKie Campbell, Deputy Commissioner, Alaska Department of Fish & Game; to his left, Allen E. Smith, Alaska Regional Director of The Wilderness Society; and to his left, Roy Jones, testifying on behalf of Robert Loescher, Executive Vice President of Sealaska Corporation.

The Committee will now receive testimony on H.R. 704, legislation that addresses fishing in Glacier Bay National Park. H.R. 704 responds to a 1991 regulation proposed by the National Park Service that would prohibit commercial fishing activity in the Park after December 31, 1997. Commercial fishing activity has occurred in the Park for hundreds of years. The issue before the Subcommittee is whether it is possible for this activity to continue without harm to the Park or its resources.

H.R. 704 is a narrow bill that would prohibit fishing in areas designated as wilderness, while permitting fishing in other areas. In these areas where fishing is permitted, the allowable catch would be no more than the levels caught during the period 1981 to 1991

and using gear that was in use between 1981 and the date of enactment of this bill. Members will recall that legislation similar to this was unanimously reported by the Committee in the last Congress. I now yield to my distinguished colleague, the sponsor of H.R. 704, the Honorable Don Young.

**STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE  
FROM ALASKA**

Mr. YOUNG. Thank you, Mr. Chairman. I want to thank you for moving so quickly to have a hearing on this bill. And before we start with the members, I would like to bring out some facts. Number 1: As the Chairman has said, commercial and subsistence fishing has taken place in waters now in Glacier Bay National Park for hundreds of years. Fact Number 2: During that time, there is no evidence that any fishing activity was harmed or has harmed the Park's resources.

Fact number 3: Fishing in this Park is regulated by two Federal agencies, by the State of Alaska, under State and Federal law, and under two international treaties. Fact Number 4: In 1980 when the Congress passed that Alaska Lands Act, we specifically stated that fishing shall be allowed in national parks. In fact, in all parks but this one fishing is allowed. Fact Number 5: Last year, this bill was passed unanimously, as you said, Mr. Chairman, by this Committee.

In spite of all these facts, we are again here today to consider legislation requiring the Federal Government to obey the law that we passed in 1980. Mr. Chairman, frankly, I think this is a ridiculous situation. There is no harm occurring to the Park's resources. Recreational opportunities and areas for specific scientific research are preserved. The fishermen are only asking to be able to do the same thing, not any more, they have been doing for hundreds of years.

Mr. Chairman, I don't know the agenda of the Park Service or the groups that oppose this bill. Local environmental groups, local communities, local fishermen, the State of Alaska, all support continuations of commercial and subsistence fishing at the present level in nonwilderness areas of the Park. I think it is time we pass this legislation, let the Park Service go on to bigger and greater things instead of wasting their time on something as silly as this. Thank you, Mr. Chairman.

Mr. MANTON. Thank you, Mr. Young. There are no other members that have opening statements so we will proceed to hear from the witnesses. The first witness will be John Morehead.

**STATEMENT OF JOHN MOREHEAD, REGIONAL DIRECTOR,  
ALASKA REGION, NATIONAL PARK SERVICE**

Mr. MOREHEAD. Thank you, Mr. Chairman. Mr. Chairman, I appreciate the opportunity to provide your Subcommittee with the views of the Department of Interior. We strongly oppose the enactment of this bill. This bill is similar to H.R. 3418 as reported by the Committee in the 102d Congress. It would open all of Glacier Bay National Park and Preserve to subsistence fishing and gathering,



and it would open all nonwilderness marine waters in Glacier Bay National Park and Preserve to commercial fishing.

Under existing law, neither subsistence nor commercial fishing is legal in the National Park portion of this area, but the Preserve portion is open to subsistence, and commercial fishing is recognized in the Dry Bay portion of the Preserve. With respect to Glacier Bay, as well as other national parks, we believe that the preservation of park values and resources is of paramount concern, and activities that derogate park values and resources should not be permitted.

Accordingly, in considering consumptive resource uses in Glacier Bay, we recommend that Congress apply a standard that places the burden of proof on showing nonderogation of the values and purposes of the Park. We are very sensitive, however, to the historic activities of the Native Tlingit, and, as I discuss later in my statement, we are looking into ways to recognize their traditional uses. I would like to address traditional subsistence uses first.

In the House Interior and Insular Affairs Committee report on ANILCA in 1979, Glacier Bay was identified as one of four national parks in Alaska which are intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures, and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause. Subsistence uses will be allowed within the Preserve portion and in the Park addition designated by ANILCA. The Senate Energy and Natural Resources Committee restricted subsistence uses only to Glacier Bay National Preserve, and that provision was retained in the Act as finally signed by law.

It is clear from this record that Congress intended that Glacier Bay National Park, the Park portion itself, be free from subsistence use provisions of ANILCA. Glacier Bay National Park is one of only four park areas in Alaska where subsistence uses are prohibited, and this prohibition was made by Congress. I point out that only 2.6 percent of the total area of the State is closed to subsistence uses. All the rest of Federal lands are open to subsistence use.

We recognize that the Native Tlingit from the Village of Hoonah near Glacier Bay have historically engaged in fishing and gathering of plants, berries, and shellfish. We believe that this level of use by these people would have no adverse impact on Park resources, and we are very willing to work with the Subcommittee in developing legislation which would authorize, under permit, local residents with record of traditional use to continue subsistence uses. The bill, as now written, is too broad, and we feel it would lead to increased taking of fish and overharvesting and result in increased competition with traditional village uses.

I would like to speak a little of commercial fishing. The National Park Service does not support legislation mandating the Secretary to permit commercial fishing in Glacier Bay National Park. H.R. 704 statutorily provides for commercial fishing with limits on seasons only permissible to conserve fish, shellfish, or crustacean stocks. This approach forgoes the protection of the 1970 General Authorities Act and the Park's resources.

Glacier Bay National Park includes slightly over half a million acres of federally administered marine waters. Commercial fishing in most of these waters predates the establishment of the original Glacier Bay National Monument in 1925. However, there have been several bits of legislation and rulemaking between then and now, and it is very clear that under the Wilderness Act and our regulations commercial fishing is prohibited in the Park proper. Despite these regulations and statutory prohibitions, commercial fishing has continued until the present time.

I have to summarize, Mr. Chairman, what the Park Service proposes—is passing regulations that would allow commercial fishing to continue in the Park in nonwilderness waters for a period between seven and ten years. The final regulation has not come out yet. It is still under review by the Department. During this study period, we would try to see if what Mr. Young believes, that there is no derogation of Park resources from commercial fishing, or whether there is, and then we could act accordingly. But we feel the study period is mandatory to protect the Park.

I do have a written statement, Mr. Chairman, I would like to submit for the record.

Mr. MANTON. Without objection, so ordered.

[The prepared statement of Mr. Morehead can be found at the end of the hearing.]

Mr. MANTON. That concludes your testimony?

Mr. MOREHEAD. Yes, sir. Thank you.

Mr. MANTON. The Chair will recognize Mr. Campbell.

**STATEMENT OF McKIE CAMPBELL, DEPUTY COMMISSIONER, ALASKA DEPARTMENT OF FISH & GAME, TESTIFYING ON BEHALF OF CARL ROSIER, COMMISSIONER, ALASKA DEPARTMENT OF FISH & GAME**

Mr. CAMPBELL. Thank you, sir. Mr. Chairman and members of the Subcommittee, for the record, I am McKie Campbell, Deputy Commissioner of the Alaska Department of Fish & Game. I would like to thank you for the opportunity to testify on behalf of a fair and just settlement of fishing issues in Glacier Bay National Park. As you have mentioned, Mr. Chairman, last year both this Committee and the Senate Energy Committee passed this legislation. I would like you to know that the State of Alaska remains firmly committed to finding a resolution to this issue.

Subsistence and commercial fisheries have existed in and around the Glacier Bay way before the National Monument was created in 1925. They existed when it was expanded in 1939 and when it became a national park in 1980. These same fisheries continue to this day, and this is important, Mr. Chairman. Neither have they, nor do they threaten to compromise the beauty of Glacier Bay, the near pristine character of the area, or the reasons for which the Park was established. The State of Alaska strongly endorses and urges your support of Representative Young's legislation, H.R. 704, to protect our people's continued commercial fishing and subsistence activities.

Commercial fishing has been conducted in the waters of Glacier Bay and the outside coast for nearly 100 years. Subsistence activi-

ties have gone on for thousands of years. In the 32 years since statehood, Alaska has effectively managed the fishery resources in the Bay so that they are abundant and healthy.

The National Park Service and the State of Alaska have conflicting claims of ownership of the marine waters of Glacier Bay and the neighboring bays, most of Icy Strait, and the waters out to the three-mile limit along the outer coast. Despite, however, these opposing claims of jurisdiction, the Alaska Department of Fish & Game has and hopes to continue to cooperate with the National Park Service in most aspects of management and the affected water resources.

As I had said, commercial fisheries have occurred in Glacier Bay area since the turn of the century. These fisheries are highly specific, targeted fisheries which allows for very conservative management. Most fisheries take place in areas seldom seen by Park visitors. The volume of commercial fishing use has been relatively stable over the years, and it shows no signs of increasing. The State has managed the fisheries through closely monitored, regulated, and enforced area-specific seasons. And as I said before, fish and shellfish populations are healthy and abundant.

Five small communities in the area of Glacier Bay depend on commercial fishing, both in waters in and adjacent to Glacier Bay National Park; the communities of Hoonah, Elfin Cove, Pelican, Yakutat, and Gustavus. To those communities, commercial fishing is the backbone of their economic livelihood, and they have no alternatives but commercial fishing.

When the Glacier Bay National Monument was established in 1925, local residents were assured that their historical uses would be allowed to continue. These include subsistence fishing, berry picking, seal hunting, and gathering of sea gull eggs. In the ensuing 70 years, the National Park Service has steadily and incrementally restricted these activities. Residents of Hoonah, Gustavus, Pelican, Elfin Cove, and Yakutat already are feeling the impact of these prohibitions. They are afraid to harvest within the region for fear of loss of their boats or other belongings. ANILCA guarantees rural Alaskans the opportunity to continue traditional subsistence practices. Closing Glacier Bay to subsistence fishing denies those same rights. It is wrong, and it is contrary to the intent of Congress.

We do disagree with the Park Service on the intent of Congress in the history of ANILCA, and as a side note, I would commend you to the analysis in Sealaska's written presentation of that legislative history. We believe a careful review of that history indicates that neither Congress nor the Administration ever considered that the Park's expansion or wilderness designation would prohibit commercial activities. In fact, representatives of fisheries groups testified in favor of the wilderness designations. There was no indication from the congressional delegations or from the Administration that these activities would be restricted.

Despite repeated pleas from the local residents and the state, the National Park Service has been unwilling to modify its pursuit of total prohibition. We have become convinced that a legislative solution is the only answer.

In closing, I would like to say the State of Alaska treasures Glacier Bay National Park, both for its natural history and grandeur and for its human history. We firmly believe that traditional levels and types of fisheries should be allowed to continue in Glacier Bay precisely because they have shown to be compatible with the Park's natural values throughout its entire existence. Thank you very much, and we hope you will support this bill.

[The prepared statement of Mr. Rosier can be found at the end of the hearing.]

Mr. MANTON. Thank you. Our next witness will be Allen E. Smith, Alaska Regional Director, The Wilderness Society.

#### STATEMENT OF ALLEN SMITH, ALASKA REGIONAL DIRECTOR, THE WILDERNESS SOCIETY

Mr. SMITH. Mr. Chairman, members of the Committee, I am Allen E. Smith, Alaska Regional Director of The Wilderness Society. I want to thank the Committee for this opportunity to speak on H.R. 704 and request that this testimony be printed in the record of this hearing. I also will summarize in the interest of time.

The Wilderness Society opposes H.R. 704 in its entirety. H.R. 704 is, in fact, a bill to amend the purposes of the Alaska National Interest Lands Conservation Act, also known as ANILCA. The changes in existing law contemplated by H.R. 704 are undesirable for the protection of the natural resources and the established purposes of Glacier Bay National Park. H.R. 704 tries to legislatively ratify prior failures of administration of existing law. ANILCA was itself a compromise.

ANILCA was a review of all of the conservation system units in Alaska and was a process that determined where individual parks and refuges and forests would allow for subsistence and commercial hunting and fishing. In that review, Glacier Bay, as well as three other parks, were determined not to be open to commercial fishing or to subsistence. As the Park Service has testified, only a very small percentage of the State has been closed to subsistence.

ANILCA was a compromise. Glacier Bay is one of the few national park system units established primarily for scientific purposes, to maintain opportunities for scientific research in undisturbed ecosystems. The general purposes of Glacier Bay are to preserve for the benefit, use, education, and inspiration of present and future generations certain lands and waters in the State of Alaska that contain nationally significant, natural scenic, historic, archeological, et cetera, values and wildlife values.

Glacier Bay National Park and Preserve is an internationally recognized natural resource landmark. In December of 1992, UNESCO designated Glacier Bay a World Heritage Site and added it to the existing Kluane/Wrangell-St. Elias World Heritage Site. The national park values of Glacier Bay are extraordinary. It is basically a wilderness park. It is the only marine waters protected on the whole West Coast.

The Wilderness Society has consistently believed that ANILCA decided this issue once. ANILCA did not decide that fishing could be allowed in Glacier Bay National Park; quite the contrary. And this bill will change the purposes of Glacier Bay as established by

ANILCA. Therefore, we oppose both commercial and subsistence fishing being allowed in the Park.

The Park Service is in the process of promulgating final regulations on fishing in the Park and has recommended that they use those regulations as a vehicle to resolve this conflict. We must reject that solution as well. On analysis, we find that the Park Service regulations will violate Park Service authorities to make such decisions as established in case law by the case *NRA v. Potter*.

Instead of H.R. 704, The Wilderness Society believes a legislative phaseout of commercial fishing in Glacier Bay National Park over a reasonable period of time is a desirable solution that recognizes both the National Park Service failure to enforce existing law prohibiting such fishing and the reality of the investments that fishermen have made in their businesses as a result of that failure.

We recommend that Congress pass legislation that would contain the following provisions: One, a legislative phaseout of commercial fishing over a 10-year period with a date—certain that all such activities would end in Glacier Bay National Park waters. Two, National Park Service would be authorized to establish and control all seasons, methods, and catch levels during the phase-out period. Three, no methods or catch levels would be allowed above those in place as of the passage of such proposed legislation.

Four, National Park Service would conduct a study of the fisheries over the life of the phaseout for the purpose of determining the impacts of fishing on the Park to limit catch levels and seasons as necessary to protect Park resources. And, five, National Park Service would promulgate its regulations to phase out fishing based on this legislation.

In summary, we see no reason to pass any of H.R. 704 and believe that the Committee ought to reject the bill outright and give the Park Service the legal tools to phase out the commercial fishing. Thank you, Mr. Chairman.

[The prepared statement of Mr. Smith can be found at the end of the hearing.]

Mr. MANTON. Thank you, Mr. Smith. Our next witness will be Roy Jones on behalf of Sealaska Corporation.

#### **STATEMENT OF ROY JONES, TESTIFYING ON BEHALF OF ROBERT LOESCHER, EXECUTIVE VICE PRESIDENT, SEALASKA CORPORATION**

Mr. JONES. Thank you, Mr. Chairman. Mr. Chairman and members of the Subcommittee on Fisheries and Management, I appear before you today on behalf of and as counsel to Sealaska Corporation, one of the 12 Alaska native regional corporations authorized under the Alaska Native Claims Settlement Act. I would like to submit for the record a statement which I will paraphrase in part of Robert Loesch, Executive Vice President for Natural Resources of Sealaska Corporation who is unable to be here today.

Mr. Loesch is a Huna Tlingit Indian, a member of the Eagle Tribe and of the Chookaneidi clan of people of Glacier Bay. Sealaska, many of whose shareholders are the descendants of the original inhabitants of Glacier Bay, supports enactment of legislation

such as H.R. 704 to recognize the rights of the people of the Sea-laska region to subsistence fish, gather, and hunt in Glacier Bay National Park and to commercial fish within the waters adjacent to the Park.

Major commercial fisheries, which operate within Glacier Bay National Park waters, are salmon trolling, halibut longlining, and dungeness crab pot fishing. Minor fisheries include a purse seine fishery for chum salmon in Excursion Inlet, ring net and pot fisheries for tanner and king crab in Glacier Bay, and a pot fishery for shrimp in Lituya Bay. The current general value of Glacier Bay fisheries to the region is about \$10.5 million annually.

In a 1980 letter to the National Park Service, Alaska Regional Office, the National Marine Fisheries Service stated that the closure of the Glacier Bay fisheries would severely impact the local communities of Hoonah, Gustavus, Pelican, Elfin Cove, depressing their economies and altering the traditional lifestyles of the inhabitants. On August 5, 1991, the National Park Service issued proposed rules which would prohibit commercial fishing in Glacier Bay after seven years. Sealaska urges that this future ban on commercial fishing be statutorily eliminated. Sealaska also supports the language of H.R. 704 which would restore to local residents subsistence fishing and gathering in accordance with Title VIII of the Alaska National Interest Lands Conservation Act.

Subsistence uses of Glacier Bay by the Huna Tlingit or Huna tribe of the Tlingit Indians began when their ancestors came to the area now known as Glacier Bay well prior to the middle 1700's. The first archeological evidence of the aboriginal residence in the Glacier Bay area of the Tlingit people has been dated at approximately seven centuries before Thomas Jefferson wrote the Declaration of Independence.

In 1879, during his travels in which he discovered Glacier Bay, Sierra Club founder John Muir wrote, "Our hosts proved to be Huna seal hunters laying in their winter stores of meat and skins. We asked many questions concerning the ice mountains and the strange bay to most of which our inquisitive Huna friends replied with counterquestions as to our object in coming to such a place especially so late in the year. John explained that our hearts were good and every Indian our friend."

In the early 1920's, the U.S. Government sent an envoy to meet with spokespersons for the Chookaneidi, Takdeintaan, Kaagwaantaan, and the Wooshkeetaan clans, all of whom had lived on or used the waters and lands of what later became known as Glacier Bay and Glacier Bay National Park. The government representatives explained that the Federal Government was going to make the ancestral homeland of the Tlingit people a national monument but that the people would still be able to use their customary and traditional uses of the resources of the area to hunt fish, gather berries, and so forth. After this assurance was explained to the native people, all four clans agreed to the Federal Government's proposal.

Glacier Bay was known as the Hoonah breadbasket or the main place for the Hoonah people. During the Great Depression, Glacier Bay provided sustenance for many of the people living in Hoonah. In a recent publication by the American Museum of Natural Histo-

ry entitled, "The Tlingit Indians," a photograph dated 1889 shows strips of salmon and halibut drying on racks in front of the houses at the Hoonah summer village called Salmon Water at Bartlet Cove which is the current location of the National Park Service headquarters in Glacier Bay. Surely no one can seriously contend that Glacier Bay is not the homeland of the Huna Tlingit people. So why is there a problem?

As Mr. Loescher's statement explains in both versions of H.R. 39 in 1978 and '79, subsistence uses of park resources by local residents were provided for and protected. In the Senate, however, based on some incorrect information regarding subsistence uses of Glacier Bay, language was included in that bill which the National Park Service contends prohibits subsistence uses of Glacier Bay. Simply stated, it was a mistake that should be corrected; an egregious injustice that should be remedied, and it can be remedied without jeopardizing the continued viability of a particular fish or wildlife population. The Huna Tlingit people have lived in harmony with the land and would continue to do so in the future.

Mr. Chairman, thank you very much for this opportunity to present this testimony today.

[The prepared statement of Mr. Loescher can be found at the end of the hearing.]

Mr. MANTON. Without objection, the full statement will be placed into the record. That concludes the testimony of our panel, and we will now stand for a few questions. I have a question for Mr. Morehead of the National Park Service. The goal of H.R. 704 is to maintain the current level of fishing activity. My question is, is the Park being harmed by the current activity?

Mr. MOREHEAD. We don't know, Mr. Chairman, and the purpose of our regulation and the proposed study period would be to find that out.

Mr. MANTON. And for Mr. Jones, if the Park Service is allowed to prohibit fishing, is there some way that your people could be compensated for this loss of historic rights?

Mr. JONES. I don't believe so, Mr. Chairman. I think fishing to the people there is so intricately involved in their culture and their well being that there is no money that can replace it.

Mr. MANTON. Mr. Campbell, the Park Service witness has testified that over 97 percent of the State is open to subsistence use. Do you agree with that figure, and, if so, why is it necessary to open up this Park?

Mr. CAMPBELL. Mr. Chairman, without commenting on the figure, I would say that subsistence is a highly local activity, and if the area close to you is not open, the area you depend on, the rest of the State being open does you no good.

Mr. MANTON. And for Mr. Smith, there is an implication that the restriction on subsistence activities would breach an agreement made between the Federal Government and various tribes. I wonder if you would comment on that.

Mr. SMITH. Mr. Chairman, do you mean the legislation breached that agreement in ANILCA? I am not sure I understand the question, sir.

Mr. MANTON. Yes. Not the legislation but rather the Park's regulation would place a restriction on subsistence activities.

Mr. SMITH. The Park's regulation putting a restriction on subsistence activities follows the law of ANILCA which prohibits subsistence in the Park.

Mr. MANTON. Wasn't there a promise to the native tribes when the Park was originally set up that their rights would be protected?

Mr. SMITH. I am not aware of that, sir, in terms of the legislative record or what Congress actually dealt with in making the decision.

Mr. YOUNG. Mr. Chairman, at the appropriate time—I mean, I just would like to make a comment. There are only two people in this room that were here when we passed H.R. 39—just myself and Mr. Jones. But I will tell you, Mr. Chairman, in following up your question, those commitments were made way back when. They were made in the Committee, Mr. Jones as chief counsel. It was never intended to ever exclude subsistence or an existing commercial fishery. And later on—I don't know who your lawyers are, but you have got some rotten ones. Go ahead, Mr. Chairman.

Mr. MANTON. Mr. Smith, you made reference to the *NRA v. Potter* case—

Mr. SMITH. Yes, sir.

Mr. MANTON [continuing]. in your testimony. If I understand it correctly, you believe commercial fishing is not legally authorized within Glacier Bay National Park, and question the legal authority of the National Park Service to allow this activity to continue for another seven or ten years or indefinitely as they propose?

Mr. SMITH. That is correct. That is my interpretation of the application of *NRA v. Potter* to this specific situation.

Mr. MANTON. If strictly applied, would *Potter* permit this seven-year hiatus?

Mr. SMITH. No, sir, it would not. The Park Service would need legislative authority to put in place regulations for a phaseout, and that is why we have recommended such legislation.

Mr. MANTON. So are they acting illegally now under *Potter*?

Mr. SMITH. Yes, sir. Well, the Park Service is acting illegally in that it has not enforced the law which prohibits commercial fishing in the Park. The Park Service, in prior testimony, has admitted that it is not legal for commercial fishing to proceed in the Park at this point.

Mr. YOUNG. Mr. Chairman, I have a letter here dated February the 13th I would like to submit for the record.

Mr. MANTON. Without objection.

[The Park Service letter can be found at the end of the hearing.]

Mr. YOUNG. From the head of the Park Service nationally, and I want to read a paragraph. "Given the fact that the Secretary of the Interior and the National Park Service are not statutorily prohibited from allowing commercial fishing in National Park Service areas, and the fact that commercial fishing has been allowed to continue and acknowledged by the National Park Service, we are formulating the current regulatory approach."

Now, Mr. Chairman, if I may say so, in this Act that Mr. Jones and I worked on, it says, yes, there shall be subsistence fishing in all parks. Now, your lawyers say no, but I say you are full of beans. It says it right here. I worked on that legislation. This is the law,



not the report. And here we have right now the man who is the head of—your boss—saying you have no statutory right to prohibit commercial fishing, but you are going to set forth the regulations. We have Mr. Smith who got some cockamamie testimony here—doesn't know what he is talking about, and I am suggesting that is why we need to have this legislation passed to solve a very serious problem that is being interpreted by a special interest group and by an agency that has tried to undo what the Congress intended to do.

And I want to say that the State has been supportive. My bill establishes the fact that the state's rights are not being extinguished. We have made this bill very narrow. It is probably the most narrow bill that we could possibly have after a lot of work, and I sit and watch an interest group opposing the historical users of this area, an agency that is funded by this Congress, by the way, to a great extent in the new budget from this Administration in Alaska, Mr. Morehead—I am sure you are aware of that—

MR. MOREHEAD. I am well aware of it, sir.

MR. YOUNG. You are going to be a lot more aware of it too, and I have stated a long time ago that you ought to be parts and partners with the people of Alaska. And I will keep urging you to do that because this is—I even hate to waste our time because this thing is so obvious. Mr. Jones speaking for Mr. Loescher is actually presenting a view of those people who have used this land forever, and I don't expand the commercial end of it, Mr. Chairman. I leave the commercial end the way it is right now. And if I misspoke, Mr. Jones, for The Wilderness Society, I apologize. The name is in front of Mr. Smith. So Smith and Jones—what the heck—they are all the same.

MR. SMITH. We have had that problem before.

MR. YOUNG. But I am just saying that, you know, I listened to the testimony here, and I am going on here, but there is no law that is on the books. Now, you have interpreted it that way, and Mr. Smith says you are wrong too in the other way, but there is no law. And I don't understand, Mr. Morehead. Why do you insist upon this? I mean, is this coming from Washington, DC, when I got the head guy saying there is no statutory law? Where is this coming from that says you can't have fishing?

MR. MOREHEAD. Yes, sir. My testimony was cleared through the Park Service and the Department and OMB before we sent it here.

MR. YOUNG. Well, is Mr. Ridenour—is he still down there?

MR. MOREHEAD. No, sir.

MR. YOUNG. He is not down there?

MR. MOREHEAD. No, sir.

MR. YOUNG. Who is there now?

MR. MOREHEAD. We have no director. The Acting Director is Herb Cables.

MR. YOUNG. The Acting Director?

MR. MOREHEAD. That is right, sir.

MR. YOUNG. All right. Well, Mr. Chairman, again, like I say, you have got a long four years ahead of you, Mr. Morehead, including the Park Service because this is a nothing in the total picture. But it is a very important thing to my little people, and we are going to pass this legislation. And I am going to put it on the President's

desk, and I want your group to recommend a veto, and I will see that the Park Service gets smaller and smaller every year in the State of Alaska instead of larger. Thank you, Mr. Chairman.

Mr. MANTON. Thank you, Mr. Young. That concludes our questions, if there are no other members requesting time for questions. That will conclude our hearing today on H.R. 704, and we thank you gentlemen for your testimony, and the meeting is adjourned.

[Whereupon, at 3:07 p.m., the Subcommittee was adjourned, and the following was submitted for the record:]

103D CONGRESS  
1ST SESSION

# H. R. 704

To regulate fishing in certain waters of Alaska.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 1993

Mr. YOUNG of Alaska introduced the following bill; which was referred jointly to the Committees on Natural Resources and Merchant Marine and Fisheries

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## A BILL

To regulate fishing in certain waters of Alaska.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. DEFINITIONS.**

4 For the purposes of this Act, the term "Glacier Bay  
5 National Park" means the national park and national pre-  
6 serve redesignated, established or expanded under section  
7 202(1) of the Alaska National Interest Lands Conserva-  
8 tion Act (16 U.S.C. 410hh-1).

### 9 **SEC. 2. SUBSISTENCE USE.**

10 Subsistence fishing and gathering by local residents,  
11 including but not limited to the residents of Hoonah, shall  
12 be allowed in Glacier Bay National Park in accordance

1 with the provisions of title VIII of the Alaska National  
2 Interest Lands Conservation Act (16 U.S.C. 3111 through  
3 3126).

4 **SEC. 3. COMMERCIAL FISHING.**

5 (a) Commercial fishing shall be allowed in all marine  
6 waters of Glacier Bay National Park except areas des-  
7 ignated as wilderness under section 701(3) of the Alaska  
8 National Interest Lands Conservation Act (16 U.S.C.  
9 1132 note).

10 (b) Within the marine waters of Glacier Bay north  
11 of a line drawn point to point from Point Carolus to Point  
12 Gustavus—

13 (1) the annual average commercial fishing ef-  
14 fort for each species shall be maintained at a level  
15 no greater than the average annual effort which ex-  
16 isted for that species during the period from 1981  
17 through 1991, as determined by the State of Alaska  
18 in consultation with the Secretary of the Interior;  
19 and

20 (2) only those types of commercial fishing gear  
21 in use between 1981 and the date of enactment of  
22 this Act shall be allowed.

23 (c) Within Glacier Bay National Park, commercial  
24 fishing seasons shall, to the extent possible, be consistent  
25 with and not exceed the commercial fishing seasons estab-

1 lished in waters adjacent to Glacier Bay National Park,  
2 except that seasons may be limited to conserve fish, shell-  
3 fish or crustacean stocks.

4 (d) Nothing in this Act shall affect section 1314(a)  
5 and (b) of the Alaska National Interest Lands Conserva-  
6 tion Act (16 U.S.C. 3202(a) and (b)).

7 (e) The Secretary of the Interior, in consultation with  
8 the State of Alaska, shall study the effect of commercial  
9 fishing activities authorized by this Act in Glacier Bay Na-  
10 tional Park to determine whether such fishing is having  
11 a detrimental effect on Park resources, including the op-  
12 portunity for recreational use of the Park. The Secretary  
13 shall report the results of the study to the Committees  
14 on Merchant Marine and Fisheries and Natural Resources  
15 of the House of Representatives, and the Committee on  
16 Energy and Natural Resources of the Senate, not later  
17 than three years after the date of enactment of this Act.

18 **SEC. 4. EFFECT ON TITLE AND JURISDICTION OF TIDAL**  
19 **AND SUBMERGED LANDS.**

20 (a) No provision of this Act shall be construed to in-  
21 validate or validate or in any other way affect any claim  
22 by the State of Alaska to title to any or all tidal or sub-  
23 merged lands, nor shall any actions taken pursuant to or  
24 in accordance with this Act operate under any provision  
25 or principle of the law to bar the State of Alaska from

1 asserting at any time its claim of title to any or all of  
2 the tidal or submerged lands.

3 (b) Nothing in this Act nor in any actions taken pur-  
4 suant to this Act shall be construed as expanding or di-  
5 minishing Federal or State jurisdiction, responsibility, in-  
6 terests, or rights in management, regulation, or control  
7 over waters of the State of Alaska or tidal or submerged  
8 lands under any provision of Federal or State law.

STATEMENT OF JOHN M. MOREHEAD, REGIONAL DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON FISHERIES MANAGEMENT, ON H.R. 704, AUTHORIZING SUBSISTENCE AND COMMERCIAL FISHING IN GLACIER BAY NATIONAL PARK AND PRESERVE, ALASKA.

April 28, 1993

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Mr. Chairman, I appreciate this opportunity to provide your Subcommittee with the views of the Department of the Interior on H.R. 704.

We strongly oppose the enactment of this bill.

The bill is similar to H.R. 3418 as reported by this Committee in the 102d Congress. It would open all of Glacier Bay National Park and Preserve in Alaska to subsistence fishing and gathering, and it would open all nonwilderness marine waters in Glacier Bay National Park and Preserve to commercial fishing.

Under existing law, neither subsistence nor commercial fishing is legal in the park, but the preserve is open to subsistence, and commercial fishing is recognized in the Dry Bay portion of the preserve. With respect to Glacier Bay, as well as other national parks, we believe that the preservation of park values and resources is of paramount concern, and activities that derogate park values and resources should not be permitted. Accordingly, in considering consumptive resource uses in Glacier Bay, we recommend that Congress apply a standard that places the burden of proof on showing non-derogation of the values and purposes of

the park. We are, however, sensitive to the historical activities of the Native Tlingit and, as I discuss later in my statement, we are looking into ways to recognize their traditional uses.

In 1978, Congress in amending the National Park System General Authorities Act of 1970, prohibited administrative authorization of activities in the National Parks in derogation of the values and purposes for which these various areas have been established. This statutory standard for permitting activities administratively is equally appropriate, in our view, in judging the merits of legislative proposals to permit consumptive uses of park animals and plants.

#### Traditional Uses

In the House Interior and Insular Affairs Committee report on ANILCA (House Report 96-97, April 18, 1979), Glacier Bay was identified as one of four National Parks which are "intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause." The report stated that: "The new National Park consists of all of the lands and waters within the present [Glacier Bay] national monument and an addition of 523,000 acres of public lands above mean high tide" and that



"Subsistence uses will be allowed within the preserve, and in the Park addition designated in this act". The Senate Energy and Natural Resources Committee restricted subsistence uses only to Glacier Bay National Preserve and that provision was retained in the Act as finally signed into law.

It is clear from the record that the Congress intended that Glacier Bay National Park be free from subsistence use provisions of ANILCA. Glacier Bay National Park is one of only four park areas in Alaska where subsistence uses are prohibited and this prohibition was made by Congress. Only 2.6% of the total area of the state is closed to subsistence uses under ANILCA.

We recognize that Native Tlingit from the village of Hoonah near Glacier Bay have historically engaged in fishing and gathering of plants, berries, and shellfish in the park. We believe that this level of use by the Native people of Hoonah would have no adverse impact on park resources. No evidence of non-Native subsistence use of this area is found in the legislative history, and none was presented in public meetings and comments received on proposed regulations in September and October 1991. Accordingly, we view H.R. 704, which would open the park to subsistence fishing and gathering under the authority of Title VIII of ANILCA, which would include new residents and those non-Natives with no record of traditional use, as far too broad. It would lead to increased taking of fish and over harvesting of wild

foods, and result in increased competition with the traditional village users. One of the options we are considering is to seek authorization for issuing permits to Natives from the village of Hoonah for customary and traditional fishing and plant gathering for direct personal and family consumption. We intend to develop further options that would provide legal recognition of the traditional uses of Hoonah Natives, and we welcome the Subcommittee's suggestions in this regard.

#### Commercial Fishing

The National Park Service does not support legislation mandating the Secretary to permit commercial fishing in Glacier Bay National Park. H.R. 704 statutorily provides for commercial fishing, with limits on seasons only permissible to conserve fish, shellfish, or crustacean stocks. This approach forgoes the protection of the 1970 General Authorities Act and its amendments in regard to the marine areas of the park.

Glacier Bay National Park includes approximately 553,920 acres of federally administered marine waters.

Commercial fishing in most of these marine waters predates the establishment of the original Glacier Bay National Monument in 1925.

National Park Service general regulations have prohibited commercial fishing in park areas since at least the 1930s. However, in Glacier Bay, there was a special regulation that allowed commercial fishing from the 1940s through 1966 under an exemption to the general prohibition.

With the removal of this exemption from Park Service regulations in 1966, commercial fishing in Glacier Bay became a prohibited business activity. In 1980, ANILCA designation of certain areas of the park marine waters as wilderness resulted in a statutory prohibition of commercial fishing within those waters under the Wilderness Act. In 1983, the Park Service established a nationwide regulatory prohibition on commercial fishing in all park waters (36 CFR 2.3(d)(4)).

Despite regulatory and statutory prohibitions, commercial fishing in Glacier Bay National Park and Preserve has continued.

To address the commercial fishing issue, the National Park Service participated in public hearings in March and April 1990 and January 1991. After these meetings, the Service proposed in the Federal Register on August 5, 1991, special regulations phasing out commercial fishing over a period of five years. During that time, the proposed regulations provided that studies would be conducted to determine whether commercial fishing could continue without adversely affecting park resources and values.

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The purpose of the interim exemption was two-fold: first, to ease socioeconomic effects of an immediate shutdown of commercial fishing in the park; and second, to conduct new studies on the relationship of commercial fishing to park resources and purposes.

The interim allowance for commercial fishing in the proposed regulations was limited to seining for salmon in Excursion Inlet, trolling for salmon, long lining for halibut, and ring and pot fishing for crab. These are the only long-term traditional fisheries that have occurred in park waters.

We intend that the regulatory process go forward with final review by the Office of the Secretary. By contrast, H.R. 704 would abrogate the regulatory process and remove discretion from the Service's professional managers and scientists, mandating permanent commercial and subsistence fishing in the park and preserve. This would be contrary to general park policy, to the intent of ANILCA, and to good management practices.

This concludes my prepared remarks, Mr. Chairman. I would be pleased to answer any questions you may have.

**Testimony of Carl Rosier****Commissioner****Alaska Department of Fish and Game****on H. R. 704****Submitted to the Subcommittee on Fisheries Management of the  
Committee on Merchant Marine and Fisheries****April 28, 1993**

Mr. Chairman and Members of the Subcommittee:

My name is Carl Rosier and I am the Commissioner of the Alaska Department of Fish and Game. I'd like to thank the Committee for the opportunity to testify on behalf of a fair and just settlement of fishing issues in Glacier Bay National Park. I personally, and other members of my staff, have spoken previously before Congress on this topic. As you may recall, last year both this Committee and the Senate Energy Committee passed this legislation. I'd like you to know that the State of Alaska is firmly committed to finding ways to resolve these issues.

I'll to begin by providing you with some of the historical background necessary for discussing appropriate management and use of the waters in and around Glacier Bay National Park.

Some of you here today may not have seen Glacier Bay, but as you have all no doubt heard, it is a beautiful and largely wild place. This is the way it was also during the retreat of the last of the glaciers that completely filled the bay, nearly 200 years ago. At that time, which was shortly after Vancouver charted this portion of the Northwest coast, the Tlingit inhabitants of the area began to reoccupy traditional hunting and fishing territories within Glacier Bay. These were areas from which they had been forced to flee many years earlier, due to the advancing ice. Archeological evidence of this early occupancy remains today.

Southeast Alaska and the area near Glacier Bay was visited and settled in the mid to late 1800s by many non-Native Europeans and Americans, who explored, prospected, mined, homesteaded, fished, or lived off the land. By the early 20th century a salmon saltery near the present park headquarters at Bartlett Cove supported commercial fishermen settling in the area. The nearby communities of Gustavus, Pelican, Elfin Cove and Hoonah developed small-scale commercial fishing economies. Many of these early commercial fishermen were Tlingit Indians, some born and raised within Glacier Bay itself. The journals of early visitors to the area, including those of John Muir, describe this early history of use of Glacier Bay. Subsistence and commercial fisheries existed in and around the bay when Glacier Bay National Monument was created in 1925, when it was expanded in 1939, and when it became a National Park in 1980. These same fisheries continue to this day, and no one, not even the National Park Service, has ever been able to demonstrate that these traditional uses have compromised the beauty of Glacier Bay, the near-pristine character of the area, or the reasons for which the park was established.

Congressmen, the State of Alaska strongly endorses and urges your support of Representative Young's legislation, H. R. 704.

We urge this committee and Congress to adopt measures to protect our people's continued commercial fishing and subsistence activities in the State of Alaska. As I have described, commercial fishing has been conducted in the waters of Glacier Bay and outside coast for nearly 100 years. Subsistence activities have gone on for thousands of years. In the 32 years since statehood, Alaska has effectively managed the fishery resources so they are as abundant and healthy as ever.

The National Park Service claims that more than 600,000 acres of marine waters are within the boundaries of the park. They claim not only Glacier Bay itself, but other bays, most of Icy Strait, and waters out to the 3-mile limit along the entire coast. The Park Service also asserts that a portion of the waters is designated wilderness. It argues that the bay is a pristine non-human-influenced environment. In reality, while the area appears both wild and relatively untouched, commercial and subsistence uses have been occurring for far longer than the park has existed. Furthermore, the state claims ownership of those same waters and submerged lands based on the Equal Footing Doctrine, Alaska Statehood Act, and the Utah Lake decision. Despite opposing claims of jurisdiction, the Alaska Department of Fish and Game has cooperated with the National Park Service in most aspects of management affecting water resources. For example, the department cooperated in establishing vessel restrictions within the bay to protect whales, and we intend to maintain our involvement in the park's vessel management planning process. Also, we are currently involved in joint fishery population assessment studies in Glacier Bay.

#### Importance of this Legislation to Commercial Fisheries

As I said, commercial fisheries have occurred in the Glacier Bay area since the turn of the century. Commercial dungeness crab fishing occurs during two seasons each year. A pot shrimp fishery occurs in limited areas. Commercial trolling for salmon is closely regulated by the State of Alaska, and halibut fishing is tightly controlled by the International Pacific Halibut Commission. These fisheries utilize gear that is highly specific to targeted species, therefore allowing for very conservative management. Most fisheries take place in areas that are seldom seen by park visitors. The volume of commercial fishing use has been relatively stable over the years. The State of Alaska has managed the fisheries through closely monitored, regulated, and enforced area-specific seasons. Fish and shellfish populations are healthy and abundant in and around Glacier Bay, following three decades of careful state management, coordinated with federal and international management of the fishery resources.

Five area communities greatly depend on commercial fishing in waters adjacent to the park: Hoonah, Elfin Cove, Pelican, Yakutat and Gustavus. Other communities in the region, such as Juneau and Sitka, have economies in which commercial fisheries and support services are a significant component. Residents of these communities already are feeling a serious impact from the threatened loss of their economic base. Boats and homes cannot be sold when the majority of residents are facing lost livelihoods. Commercial fishing has been the economic base for multiple generations--for many, there is no alternative economic option.

#### Significance of this Legislation to Subsistence Activities

When the Glacier Bay National Monument was established in 1925, local residents were assured that their historical use of the area would be allowed to continue. These activities included subsistence fishing, berry picking, seal hunting, and gathering of seagull eggs. In the ensuing 70 years, the National Park Service has

incrementally restricted these activities. Despite increasing restrictions on subsistence activities, local residents have continued to use waters in and near the park including Dundas Bay, Excursion Inlet, Taylor Bay, Lituya Bay, and Glacier Bay itself. Current subsistence activities in the Glacier Bay area include harvesting of berries, waterfowl, seals, salmon, shellfish, intertidal plants, seagull eggs and bottomfish.

Residents of Hoonah, Gustavus, Pelican, Elfin Cove and Yakutat already are feeling the impacts of Park Service prohibitions. Even though the park superintendent has publicly reiterated that there will be no enforcement of the current blanket prohibition on subsistence uses, there has been sporadic enforcement in past years. Consequently, people are afraid to harvest within the region for fear of loss of their boats and other belongings. Such intimidation has been just as effective as regulation.

Congressmen, the Alaska Lands Act of 1980 (commonly known as ANILCA) guarantees rural Alaskans the opportunity to continue traditional subsistence practices. By closing Glacier Bay to subsistence fishing, these same rights are being denied by the National Park Service. Such action is wrong, it's misguided, and it's contrary to the intent of Congress.

#### Legislative Resolution

Careful review of ANILCA and its legislative history indicates neither Congress nor the administration ever considered that the park's expansion or wilderness designation would prohibit commercial fisheries. In fact, representatives of the fisheries groups testified in favor of wilderness designations, provided that commercial fishing was allowed to continue. There was no indication from the congressional panel or the administration that commercial fishing would be prohibited.

Despite repeated pleas from the local residents and the State of Alaska, the National Park Service has been unwilling to modify its intent to pursue total prohibitions. Therefore we are becoming convinced that a legislative solution is our only hope for a timely and effective resolution of these issues. This committee and Congress can save a great deal of unnecessary suffering, expense, and uncertainty by adopting this legislation, to allow continuation of long-standing commercial fishing and subsistence activities.

#### Closing

In closing, I want to say that some would mislead you into believing that the intent of the State of Alaska is to open all of Glacier Bay National Park to exploitive use, which would threaten the values that have inspired and justified the creation of the National Park. Nothing could be further from the truth.

We firmly believe that traditional levels and traditional types of fisheries should be allowed to continue in Glacier Bay and other waters adjacent to the National Park, precisely because they have proven to be compatible with the park's natural values throughout its entire existence. Communities have grown up depending upon the livelihood provided by these traditional fisheries. It is time for the National Park Service to recognize that the human history of the Glacier Bay area is one of its most vital attributes. This history should be celebrated rather than ignored. Subsistence and commercial fisheries should continue to be accommodated rather than prohibited.

For these reasons the State of Alaska strongly supports Representative Young's legislation.

TESTIMONY OF

ALLEN E. SMITH  
ALASKA REGIONAL DIRECTOR  
THE WILDERNESS SOCIETY

ON

H.R. 704

To regulate fishing in certain waters of Alaska

BEFORE

FISHERIES MANAGEMENT SUBCOMMITTEE  
COMMITTEE ON MERCHANT MARINE AND FISHERIES  
UNITED STATES HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C.

April 28, 1993



Mr. Chairman, members of the committee, I am Allen E. Smith, Alaska Regional Director of The Wilderness Society. I live in Anchorage, Alaska. I want to thank the committee for this opportunity to speak on H.R. 704 and request that this testimony be printed in the written record of this hearing. I would also like to reserve the right to submit additional written comments on H.R. 704 to the record as necessary.

The Wilderness Society is a non-profit conservation organization engaged in public education and advocating the protection of the wilderness and wildlife values of our country's national parks, refuges, forests, rivers, and public lands. With over 300,000 members nationwide, 1,500 of whom live in Alaska, The Wilderness Society has a longstanding involvement with the history of establishment and protection of Glacier Bay National Park & Preserve.

#### SUMMARY STATEMENT:

The Wilderness Society opposes H.R. 704 in its entirety.

H.R. 704 is in fact a bill to amend the purposes of the Alaska National Interest Lands Conservation Act, also known as ANILCA. The changes in existing law contemplated by H.R. 704 are undesirable for the protection of the natural resources and purposes of Glacier Bay National Park & Preserve, as established by Congress. The proposed legislation contained in H.R. 704 does not meet any test of being compatible with the purposes of Glacier Bay National Park, a magnificent wilderness park, nor does it justify legally opening the park to subsistence and commercial fishing.

H.R. 704 would also foreclose consideration of further designations of wilderness waters and designation of motorless wilderness waters, actions that should be considered by Congress in protecting Glacier Bay National Park & Preserve, as provided by the Alaska National Interest Lands Conservation Act (ANILCA).

H.R. 704 tries to legislatively ratify failures of administration of existing laws and in Section 4 tries to set the stage for transfer of federal authority over the waters and submerged lands in Glacier Bay to the State of Alaska. H.R. 704 should be rejected.

The Wilderness Society has supported and worked for the subsistence provisions of Title VIII in ANILCA, and we support the protection of subsistence opportunities outside Glacier Bay National Park on the Tongass National Forest and adjacent waters. But we do not support opening Glacier Bay National Park to subsistence hunting, fishing and gathering. The potential impacts on this park are enormous if that were to happen, and are not warranted.

The National Park Service is in the process of promulgating final regulations on fishing in the park and has recommended that they use those regulations as the vehicle to resolve the existing resource conflict in the park waters. On analysis, we must also reject that solution, since it would violate the National Park Service authorities to make such decisions as established by case law in National Rifle Association vs. Potter (U.S. District Court, District of Columbia, 1986).

Instead of H.R. 704, The Wilderness Society believes that a legislative phase-out of commercial fishing in Glacier Bay National Park over a reasonable period of time is a desirable solution that recognizes both the National Park Service failure to enforce existing law prohibiting such fishing and the reality of the investments that fishermen have made in their businesses as a result of that failure. We recommend that Congress pass legislation that would contain the following provisions:

- (1) a legislative phase-out of commercial fishing over a ten year period with a date-certain that all such activities would end in Glacier Bay National Park waters,
- (2) National Park Service would be authorized to establish and control all seasons, methods, and catch levels during the phase-out period,
- (3) no methods or catch levels would be allowed above those in place as of the passage of such proposed legislation,

(4) National Park Service would conduct a study of the fisheries over the life of the phase-out for the purpose of determining the impacts of fishing on the park to limit catch levels and seasons as necessary to protect park resources, and

(5) National Park Service would promulgate its regulations to phase-out fishing based on this legislation.

Glacier Bay is one of the few national park system units established primarily for scientific purposes. In his 1925 proclamation declaring Glacier Bay a national monument, President Coolidge stated that Glacier Bay provided "a unique opportunity for the scientific study of glacial behavior and of resulting movements and developments of flora and fauna and of certain valuable relics of interglacial forests." The Alaska National Interest Lands Conservation Act of 1980 (ANILCA) reaffirmed the scientific value of Glacier Bay and directed the National Park Service "to maintain opportunities for scientific research in undisturbed ecosystems" (emphasis added).

The general purposes of Glacier Bay National Park & Preserve are stated in Section 101 of ANILCA as follows: "to preserve for the benefit, use, education, and inspiration of present and future generations certain lands and waters in the State of Alaska that contain nationally significant natural, scenic, historic, archeological, geological, scientific, wilderness, cultural, recreational, and wildlife values" (emphasis added).

Glacier Bay National Park and Preserve is an internationally recognized natural resource landmark. In December, 1992, UNESCO designated Glacier Bay a World Heritage Site and added it to the existing Kluane/Wrangell-St. Elias World Heritage Site.

#### ANILCA BACKGROUND:

Glacier Bay National Park is one of only 50 national parks in the United States and its territories, that are all managed to the consistently high standards of the National Park Service (NPS) Organic Act as amended (16 U.S.C. Section 1 et seq.). All NPS units, national parks and otherwise, are to be managed to this high standard per the General Authorities Act of 1970 (P.L. 91-383, 16 U.S.C. Section 1a-1 et seq.). The only exceptions to this rule are those specifically authorized by Congress.

When Congress passed the Alaska National Interest Lands Conservation Act of 1980, also known as ANILCA, it decided several issues among competing and often conflicting interests for all 13 National Parks, 16 National Wildlife Refuges, 2 National Forests, 2 National Forest Monuments, 2 BLM Conservation and Recreation Areas, and 25 National Wild and Scenic Rivers in Alaska, a total of 56 Conservation System Units. Decided at that time were which lands would be parks and refuges, what the legislative purposes of each of these conservation system units would be, which parks would allow for subsistence uses and which would not, where commercial fishing would and would not be allowed, and a host of other management and planning issues too numerous to list here today. This Act took the better part of ten years to craft, debate and negotiate the balancing of these competing interests. This was the context in which Congress decided that there would be no subsistence hunting and fishing and no commercial fishing in Glacier Bay National Park, but that those activities would be allowed in the adjacent Glacier Bay National Preserve.

The Wilderness Society believes that H.R. 704 is one of many temptations to change ANILCA that will be brought before Congress under various titles to improve the management of something, but in fact represent efforts to compromise the Congressional vision and purposes of ANILCA. Soon after the passage of ANILCA, we were confronted by a bill to convert 12 million acres of newly designated National Parks in Alaska into Preserves to allow hunting in them. Just as Congress rejected taking up that bill then, so should it reject H.R. 704 now.

We believe that H.R. 704 is just the tip of an iceberg of legislative proposals that would attempt to crack open the ANILCA lands. Alaska's national parks are under extreme pressure to be developed in the same failed ways that we are trying to extricate ourselves from in the lower 48 national parks and in ways that contravene the purposes of these magnificent parks as established under ANILCA. Alaska's national parks are essentially wilderness parks and should remain as such as an opportunity for the American people to enjoy and appreciate our wilderness heritage. Legislation such as H.R. 704 only serves to start down the path of eroding ANILCA's great conservation vision by giving in to the wishes of development interests.

#### SUBSISTENCE:

Congress excluded subsistence hunting and fishing uses from Glacier Bay National Park in ANILCA, and specifically allowed them in Glacier Bay National Preserve and all of the surrounding lands of the Tongass National Forest. One step taken at that time by Congress in shaping ANILCA was to review and evaluate established subsistence uses on all conservation system units to determine where subsistence hunting and fishing had historically taken place sufficiently to justify its continuing. The results of that review allowed subsistence uses everywhere in Alaska except on the original National Parks of Denali, Katmai, and Glacier Bay and on the new Kenai Fjords National Park. Congress explicitly decided then that subsistence would be allowed on all of the other 9 national park units in Alaska and the National Preserves at Denali, Katmai, and Glacier Bay, on the two national forests, on all national wildlife refuges, and on all BLM lands.

If Title VIII subsistence were established in Glacier Bay National Park under a typical residence zone of eligibility, there could be over 2,000 people eligible for subsistence use of Glacier Bay National Park. This could make it the most heavily accessed national park for subsistence in Alaska and would result in significant adverse impacts on park resources, including the construction of temporarily used fishing structures that would permanently remain on what are now undeveloped, pristine park shorelands.

#### COMMERCIAL FISHING:

Continued allowance of commercial fishing within Glacier Bay National Park and its designated wilderness waters is contrary to existing law, regulations, and NPS management policies. Congress excluded commercial fishing from Glacier Bay National Park in ANILCA, and specifically allowed it in Glacier Bay National Preserve. The area at issue is the waters on the outer coast within the three-mile limit and all of the waters in the inner bay of Glacier Bay that were reserved by the earlier federal monument proclamations of 1925 and 1939, well before statehood in 1959. Unfortunately, the National Park Service has never followed through on its legislative mandates to exclude those waters from fishing.

#### FEDERAL JURISDICTIONS:

Section 4. "Effect on Title and Jurisdiction of Tidal and Submerged Lands" in the bill is an attempt to render the issue of what has been clear federal ownership of tidal and submerged lands in Glacier Bay National Park and Preserve as ambiguous, thus setting the stage for the State of Alaska to try to claim those submerged lands and control of the water column above them, not only on the outer coast of the park, but on the inside bay as well. The tide lands and waters of Glacier Bay National Park are an integral part of this magnificent ecosystem that Congress had the foresight to protect for future generations. This proposed legislation, H.R. 704, should stop right here.

## CONCLUSION:

We can find no reason for Congress to go forward with any part of H.R. 704 and recommend that the subcommittee reject the bill outright. The National Park Service should be given the legal tools to phase out commercial fishing over an appropriate period of time by new legislation as outlined above.

Again, we wish to thank the subcommittee for this opportunity to comment on H.R. 704 and these important issues of managing and protecting the purposes of Glacier Bay National Park.

Allen E. Smith  
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Statement of  
Robert W. Loescher  
of  
Sealaska Corporation  
on H.R. 704

before

the Subcommittee on Fisheries Management  
of  
the Committee on Merchant Marine and Fisheries,  
U.S. House of Representatives

April 28, 1993

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Mr. Chairman, Members of the Subcommittee on Fisheries Management: My American name is Robert W. Loescher, my Tlingit name is "Kah Toosh Tu". I am a Huna Tlingit Indian and a member of the Eagle Tribe. My clan is on the Chookaneidi, the people of Glacier Bay. I am of the Ice House. Our clan crests are the bear and the porpoise.

I am also Executive Vice President for Natural Resources of Sealaska Corporation, one of the twelve Native regional corporations authorized under the Alaska Native Claims Settlement Act. I am testifying before you today on behalf of the Sealaska shareholders whose ancestors lived in and relied upon fishing and gathering, from time immemorial. We support enactment of legislation such as H.R. 704 to recognize our peoples' right to subsistence fish and gather and hunt in Glacier Bay National Park and to allow them to commercial fish within the waters adjacent to the Park.

COMMERCIAL FISHING IN GLACIER BAY

Although the principal focus of my testimony is to secure passage of legislation to ensure recognition and protection of our subsistence rights in Glacier Bay and Glacier Bay National Park, we also ask for this Subcommittee's support in protecting the portions of the livelihoods of our people which are dependent in large measure on the fishery resources of Glacier Bay.

We have for many generations relied on such fisheries commercially to help support our families. Our ability to rely on those resources is in jeopardy now unless legislation is enacted to allow us to continue to commercial fish in Glacier Bay.

We feel that the visual, natural, and recreational resources of the Park are not impaired by commercial fishing in Glacier Bay. Commercial fishing in coastal waters is regulated under a comprehensive State/Federal regime which favors estuarine fishing as the preferred location of harvest of anadromous fish. We believe that commercial fisheries should continue in these areas in the same manner and at the same level as has occurred in the last decade.

Closure of approximately 900 square miles within the boundaries of the Park, coupled with the closure 20 years ago of the Inian Islands and Icy Strait area for commercial seine net fisheries, and the limitations on fishing for halibut, crab, and troll caught salmon in these same areas will seriously and adversely affect many of our fishermen, their families, their livelihoods, and their communities. (Please see an analysis of "The Socioeconomic Importance of the Glacier Bay and Outside Coast Fisheries," which is located at Tab 5 in our Background Documents attachment).

The Glacier Bay National Park encompasses 865.5 square miles (553,920 acres) of marine waters, including the deep water fiords of Glacier and Lituya Bays, the shallow mudflats of Dundas and Taylor Bays, and the continental-shelf zone within the three-mile limit of the Park's outer coast. Commercial fishing occurs in most of these waters. Principal harvest species are five species of Pacific salmon; Pacific halibut; and dungeness, tanner and king crabs. The Alaska Department of Fish and Game regulates most of the fishing activities within the Park waters. The North Pacific Fisheries Management Council and the International Pacific Halibut Commission regulate the halibut fishery.

The major commercial fisheries which operate within the Glacier Bay National Park waters are salmon trolling, halibut longlining, and Dungeness crab pot fishing. Minor fisheries include a purse seine fishery for chum salmon in Excursion Inlet, ring net and pot fisheries for tanner and king crab in Glacier Bay, and a pot fishery for shrimp in Lituya Bay. Trolling and longlining for rockfish and other groundfish takes place in a small scale.

About 400 vessels visit the Park each year. About 300 of these vessels fish the outer coast waters. Of the 100 vessels in inside waters, half are power trollers. Park rangers record all vessels sighted on their patrols. These logs help to determine where fishing effort is concentrated.

In 1986, close to two million pounds of commercial fishing and shellfish, with a total estimated ex-vessel value of \$2.4 million were harvested from Park waters. The wholesale or processed value of this harvest was about twice the ex-vessel value or \$4.8 million. The general value to the region was about 1.5 times the wholesale value of \$7.2 million (M.S. Taylor, 1985 GBNP Report). This means that if Park waters were closed to all commercial fishing, the total loss to the regional economy in 1986 dollars would have been \$7.2 million. The impact on economies would be substantial from a closure of the outside and inside waters, particularly locally where fishermen sell a large portion of their catch to local processors, and fresh and frozen products are shipped on local airlines.

The Alaska Department of Fish and Game, Commercial Fisheries Division Commission has attached a value of about \$2.9 million annually to finfish and shellfish fisheries in the Glacier Bay area. This did not include the halibut fishery or subsistence values which cannot be quantified in any sort of realistic way. We estimated a conservative value of \$0.6 million for the halibut fishery based on 1983-86 figures bringing the total to \$3.5 million and then applied the formula used in 1986 NPS study. The wholesale or processed value of the annual harvest is about twice the ex-vessel value or

\$7.0 million. The current general value of the Glacier Bay fisheries to the region is about 1.5 times the wholesale value (\$7 X 1.5) or \$10.5 million annually.

In 1991, on a region-wide basis, a total of 224,787,000 pounds of chinook, sockeye, coho, and pink salmon were harvested in Southeast Alaska with an estimated value of \$64,539,000. Glacier Bay and its proximate outside fisheries, which contribute significantly to that regional picture, are particularly important to nearby traditional fishing communities whose subsistence users, fishermen and processors depend on harvest from the Glacier Bay area. In a November 7, 1980 letter to the NPS Alaska Regional Office, the National Marine Fisheries Service stated that the closure would severely impact the local communities of Hoonah, Gustavus, Pelican and Elfin Cove, depressing their economies and altering the traditional lifestyles of the inhabitants.<sup>1</sup>

On August 5, 1991, the National Park Service issued Proposed Rules which would prohibit commercial fishing in Glacier Bay National Park after seven years. The National Park Service contends that a service-wide prohibition on commercial fishing in national parks applies. At the end of the seven years, barring National Park Service readjustment of its regulations, commercial fishing, a livelihood on which many local Alaska Native and other people have long depended and still depend, would end.

We urge the Subcommittee by this legislation, to eliminate this future ban on commercial fishing in Glacier Bay National Park. Congress has granted a number of exceptions for commercial fishing in the National Park System, including Jean LaFitte National Historical Park, Cape Krusenstern National Monument, Cape Hatteras National Seashore, and Wrangell-St. Elias National Preserve-Malaspina Glacier Forelands Area.

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<sup>1</sup> Sources: Preliminary Harvest and Ex-Vessel Price Data, Division of Commercial Fisheries, Alaska Department of Fish and Game, 1991; Commercial Fishing in Glacier Bay National Park, Anjanette Perry, Resource Management Division, Glacier Bay National park, Alaska, 1987.



We believe that this traditional fishery that has existed for over 100 years should be continued and managed as a part of the Glacier Bay National Park activities.

**SUBSISTENCE ACTIVITIES OF ALASKA NATIVE AND RURAL PEOPLE  
WITHIN THE LANDS AND WATERS OF GLACIER BAY NATIONAL PARK**

We are here today to support Section 2 of H.R. 704 which reads, as follows:

**"SEC. 2 SUBSISTENCE USE**

Subsistence fishing and gathering of local residents, including but not limited to the residents of Hoonah, shall be allowed in Glacier Bay National Park in accordance with the provisions of Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 311 through 3126)."

This provision would clearly and definitively acknowledge the existence of Alaska Native and other rural residents in and about the Glacier Bay area and their continued use of subsistence resources. Further, this provision would tie the use and management of subsistence resources to Title VIII of ANILCA, an existing law under active implementation of an existing federal management regime, and the Federal Subsistence Board in Alaska.

As you are aware, Title VIII of ANILCA provides for a policy for utilization of the public lands for subsistence uses, provides for priority consumptive uses, and a cooperative management requirement by federal agencies with State and Native entities. All of this has been accepted by the Native and rural people of the Glacier Bay area and can be worked with into the future.

A question arises as to the National Park Service intentions and desires in this regard. Can it accept Title VIII of ANILCA?

Native people of Hoonah have indicated that the National Park Service personnel in Alaska have offered a solution that would recognize a - "Native-only commercial fisheries, and a Native only subsistence right and participation." Further, the National

Park Service has done everything it can to avoid incorporating Glacier Bay National Park into the federal management regime in Alaska implementing Title VIII of ANILCA - Subsistence provisions. It has successfully exempted Glacier Bay from the Federal Subsistence Board's published regulations. It has argued that Glacier Bay is unique in its legal origination and is to be treated differently with regard to subsistence management. And, the Park Service has done as much as it can to graft on and promote a management regime for Glacier Bay subsistence activities that will restrict subsistence uses and activities; and limit numbers of persons who might participate by applying a "residence zone" concept - all of which are authorities within National Park Service statutes and regulations.

Some of Native people of Huna have advised me that they can live with the "Native Only" approach to commercial fisheries and subsistence. They also can live with the Title VIII of ANILCA approach already in existing law and is being administered in Alaska by the federal government and with the State of Alaska administering the commercial fisheries. We ask this subcommittee and the Congress, what is the public policy to be in this regard?

Subsistence uses of Glacier Bay by the Huna Tribe of the Tlingit Indians began when our ancestors came to the area now known as Glacier Bay hundreds of years ago and <sup>have</sup> continued until the 1990's. Archeology, glaciology, and Tlingit legends, songs, and stories, clearly demonstrate Tlingit use of Glacier Bay, well prior to the middle 1700's, when western explorers first came to the Glacier Bay region. The first archeological evidence of aboriginal residence of Native people's confirmed to be Tlingits has been dated by Robert Ackerman as roughly 900 years ago, at a site known as Grouse Fort (Kaxnawa), at Ground Hog Bay. However, he also documented that aboriginals occupied that site roughly 9,000 years ago.

In the early 1920's the United States government sent an envoy to meet with people specifically to discuss a government proposal about Glacier Bay and to obtain consent to make Glacier Bay a national monument. Attending this meeting were the spokespersons for the Chookaneidi, Takdeintaan, Kaagwaantaan, and Wooshkeetaan Clans, all of whom lived on and used the waters and lands of what is now named Glacier Bay and Glacier Bay National Park.

At this meeting, representatives of the federal government explained that the government was going to make the ancestral homeland of our people a national monument but that our people would still be able to continue their customary and traditional use of the resources of this area.

Our people were assured that they would be able to continue to hunt, fish, gather berries, harvest seaweed, and otherwise carry out their traditional subsistence activities. The government explained to our people that every use they made of these lands and waters prior to the establishment of the monument, would continue after its establishment. After this was explained to our spokespersons, and they explained it to their respective clans, all four clans agreed to the federal government's proposal.

Hoonah, Gustavus, Pelican and Elfin Cove are all in the general Glacier Bay area and have the potential to be impacted by Park management. Hoonah, more so because of their strong cultural and historic ties to Glacier Bay. Also, because Yakutat has historically had some usage of the area, their community has been included as well. The Federal Subsistence Board has recognized Hoonah, Gustavus, Pelican, Elfin Cove and Yakutat as rural which makes their resident populations eligible for subsistence uses on federal public lands. Hoonah's population is 736; the Gustavus population is 158; the Pelican population is 243; the Elfin Cove population is 60; and Yakutat's population is 593. This means that 1,800 subsistence users have the potential to be affected by

National Park Service policies to disallow subsistence and commercial fishing uses in the park.

Tlingits in the Hoonah and Yakutat areas have a documented historic and cultural connection to the Glacier Bay area. Hoonah is the principal Tlingit village for Glacier Bay/Icy Straits areas. Historically, Glacier Bay and much surrounding area was owned by Tlingit clans who have inhabited and used the bay for at least the past 900 years and probably for the last 9,000 years. Glacier Bay was known as "the Hoonah breadbasket" or "the main place for the Hoonah people." The Yakutat connection centers primarily around Dry Bay. Traditional activities included the harvest of wild foods such as:

- ♦ Salmon (king, sockeye, coho, dog salmon), halibut;
- ♦ Deer, goat, seals, groundhogs, porcupine, and black bear;
- ♦ Birds and bird eggs, including seagull eggs;
- ♦ Fur animals such as land otter, marten, wolverine, and wolf;
- ♦ Wild berries, including soapberries, strawberries, loganberries, blueberries, high bush cranberries, raspberries;
- ♦ Wild vegetables including wild rhubarb and a root similar to parsnips;
- ♦ Gardens for potatoes and other vegetables;
- ♦ Ribbon seaweed and shellfish including crabs, king crabs cockles, shrimps and gumboots; and
- ♦ Timber for canoes and houses.

The Tongass Resource Use Cooperative Study began the process of documenting fishing and hunting in all permanent Southeast Alaska communities but Juneau and Ketchikan. The study evaluated the importance of salmon, other finfish, deer, invertebrates, other mammals and other wildlife for importance to community use. Salmon and other finfish totalled 45% followed by deer at 23%.

Hoonah ranked third highest among 30 Southeast communities for per capita pounds for resource harvest - 404 pounds per capita. Yakutat subsistence use was also at about 400 pounds per capita - 73% of that was salmon and finfish use. Elfin Cove

subsistence users harvested over 250 pounds per capita with 53% being salmon and finfish. Pelican subsistence users harvested about 350 pounds per capita with 50% being salmon and finfish. Gustavus residents also harvest about 250 pounds per capita with salmon and finfish comprising 52% of the subsistence harvest.<sup>2</sup>

In addition to the above-mentioned documented historical and cultural continuing use of subsistence resources, we are requesting legislative relief from this Subcommittee because the National Park Service (NPS) in 1991 closed Glacier Bay and Glacier Bay National Park indefinitely to subsistence uses based on what we believe to be an NPS misinterpretation of several provisions of the Alaska National Interest Lands Conservation Act (ANILCA).

In 1971, in the Alaska Native Claims Settlement Act (ANCSA), Congress made a deliberate decision not to address the issue of subsistence, but to leave it for the time

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<sup>2</sup> Sources:

- Alaska Review of Social and Economic Conditions, University of Alaska Anchorage, Institute of Social and Economic Research, June 1991, Vol. XXIII, No. 1
- Tongass Land Management Plan Revision: Supplement to the Draft Environmental Impact Statement, U.S. Forest Service, Alaska Region, Tongass National Forest, 1991.
- Tongass Resource Use Cooperative Study, Institute of Social and Economic Research, University of Alaska Anchorage in cooperation with the U.S. Forest Service and the Alaska Department of Fish and Game, 1988.
- A Report to the Commissioner of Indian Affairs, Possessory Rights of the Natives of Southeastern Alaska, October 3, 1946, Dr. Walter R. Goldschmidt and Theodore H. Haas.
- Tlingit Subsistence in Glacier Bay, Alaska; Responding to Change in Landscape and Bureaucracy, April 1987, Robert G. Bosworth, Alaska Department of Fish and Game, Division of Subsistence.
- Consistence and Change in Subsistence Use of Glacier Bay, Alaska, September 1988, Robert G. Bosworth, Alaska Department of Fish and Game, Division of Subsistence.
- Commercial Fishing in Glacier Bay National Park, Anjanette Perry, Glacier Bay National Park, Resource Management Division, 1987.

being in the hands of the Secretary of the Interior and the State of Alaska. The Conference Report on ANCSA stated that the "Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the natives."<sup>3</sup>

In 1977, when the General Oversight and Alaska Lands Subcommittee (Chaired by the Honorable John F. Seiberling) of the House Interior and Insular Affairs Committee began the process of developing the Alaska Lands Act, its Members recognized that subsistence uses of the conservation system units to be established, enlarged or redesignated by the legislation, had to be dealt with in a comprehensive, compassionate, and sensible way.

As a result, an entire title (Title VII which became Title VIII in ANILCA) of H.R. 39 devoted to subsistence was developed in cooperation and consultation with the Alaska Native community, including the Alaska Federation of Natives.

In the 1978 Committee Report to accompany H.R. 39, the Alaska National Interest Lands Conservation Act of 1978,<sup>4</sup> the Interior and Insular Affairs Committee (Chaired by the Honorable Morris K. Udall) specifically provided for the continuation of subsistence uses in the redesignated Glacier Bay National Park.

The above language in H.R. 39, as reported from Committee in 1978, which protected our subsistence rights in Glacier Bay, also reflected in large measure the views, aspirations, goals, and agreements of the Alaska Coalition of both national and statewide environmental organizations, as well as the Alaska Federation of Natives.

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<sup>3</sup> Reprinted at H.R. Rept. No. 95-1045, Part I, 95th Cong., 2d Sess. 183 (1978).

<sup>4</sup> H.R. Rept. No. 95-1045, 95th Cong., 2nd Sess. (1978)

The Interior Committee report accompanying H.R. 39 provided that:

"Glacier Bay National Park would continue to be managed as a natural area of the National Park System. Recreation and interpretation activities compatible with the ecological values of the area will be encouraged. Subsistence uses will be continued."<sup>5</sup>

(emphasis added.)

The language of H.R. 39 itself provided that "Glacier Bay National Monument is hereby redesignated the Glacier Bay National [REDACTED] Park, which shall be managed....to protect the viability of subsistence resources and provide the opportunity for the continuation of the traditional subsistence uses of local residents; and to provide opportunities in the addition for continuation of previously established subsistence uses."<sup>6</sup>

In the 96th Congress, on April 18, 1979, the Interior Committee again authorized subsistence uses in all Alaskan National Parks when it reported H.R. 39, Section 1108 of the bill provided:

"(a) National park System - all areas of the National Park System in the State shall be closed to the taking of fish and wildlife, except (emphasis added)

(1) for the taking of fish and wildlife for those subsistence uses authorized under Title VII of this Act (emphasis added);

(2) for fishing authorized by the Secretary and carried out in accordance with applicable laws."<sup>7</sup>

Later, in the spring of 1979, the House of Representatives passed a version of H.R. 39 that was not the Interior Committee bill but rather the Udall-Anderson substitute. In that bill an entire title was devoted to the protection and delineation of subsistence rights of rural residents (Native and non-Native alike) in conservation system units, including national parks. In summary, both times the House of Representatives spoke definitively on this issue in 1978 and 1979, subsistence uses of Glacier Bay were provided for.

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<sup>5</sup> Id.

<sup>6</sup> Id., at 9.

<sup>7</sup> H.R. No. 96-07, 96th Cong., 1st Sess. 107 (1979).

In the Senate, in the latter part of 1979 (as in 1978), apparently based on what was incorrect information--that is to say, that local residents in the Glacier Bay region did not rely on Glacier Bay for subsistence uses--language was inserted in the Committee report which stated that "subsistence uses will be allowed within the preserve, but not in the park." The bill that passed the Senate was not the Committee bill but a compromise substitute developed by Senators Jackson, Tsongas, Stevens, Hatfield, Roth and others. When the final language of that substitute was developed in the Senate prior to and during Floor action there, this same incorrect information was relied upon. As a result, legislative language appears in ANILCA (Section 203) on which the Park Service has based its closure of Glacier Bay to Subsistence.

Because there was no conference between the House and Senate on the legislation, there was no opportunity for the House's position and language on subsistence in Glacier Bay and other areas to be considered and included in the bill that ultimately was enacted. Chairman Udall, faced with a markedly changed political landscape in the fall of 1980, went to the House Floor and urged his colleagues to accept the Senate-passed bill even though there were many matters in the bill on which the House had spoken and he had hoped to insert during a House-Senate Conference that was anticipated.

Over the years since the Monument was established and after passage of ANILCA, the Huna Tlingit people continued to use Glacier Bay for customary and traditional subsistence fishing and gathering. Then, in 1991, the National Park Service and the Federal Subsistence Board, through regulations, took steps to close Glacier Bay National Park to subsistence fishing and gathering. In taking that action, the National Park Service claimed that it was doing so because ANILCA required it, thereby contending that, in essence, Congress in ANILCA broke the promise made to our people by the federal government nearly seventy (70) years ago to protect our subsistence rights. This was



never the intent of the House of Representatives in developing ANILCA, nor do we believe it was the intent of Congress.

On December 9, 1991 (over a decade after passage of ANILCA), the Federal Subsistence Board articulated its no-subsistence-fishing-in-Glacier Bay National park position in its proposed rule in 1992-93 regarding subsistence taking of fish and wildlife for federal lands in Alaska.

On January 17, 1992, Sealaska Corporation filed with the Secretary of the Interior a Petition for Rulemaking, asking the Secretary to overrule the interpretation of the Federal Subsistence Board and the National Park Service, which purported to close Glacier Bay National Park to customary and traditional subsistence fishing and gathering.

In the legal argument that accompanied the petition submitted to the Department of the Interior, we contended that, notwithstanding the Park Service interpretation of Section 203, the effect of Sections 816(a) and 1314(c) (1) and (2) of ANILCA is to authorize customary and traditional subsistence fishing and gathering in Glacier Bay National Park.

Section 816(a) of ANILCA closed all Alaska national parks to the taking of wildlife, except for "subsistence uses to the extent specifically permitted by this Act." Section 816(a) further provides that: "Subsistence uses (which under most any definition of the term would include fishing and gathering) and sport fishing shall be authorized in such areas (all national parks and park monuments in Alaska) by the Secretary and carried out in accordance with this title and other applicable laws of the United States and the State of Alaska". The only limit placed on subsistence uses in Parks is found in Section 816(b), where the Secretary is authorized to "temporarily close" an area to subsistence uses of a particular fish or wildlife population only if necessary, for reasons of public safety administration or to assure the continued viability of such population.

Section 1314(c) (1) provides that the area designated as national parks (which includes Glacier Bay National Park) will be closed to the taking of fish and wildlife except that---

"Notwithstanding any other provision of this Act (emphasis added), the Secretary shall administer those units of the National Park System and those additions to existing units, established by this Act which permit subsistence uses, . . . to provide an opportunity for the continuance of such (subsistence) uses by local rural residents . . ."

In addition, 1314(c) (2) provides that:

"Fishing shall be permitted in national parks or national park system monuments by the Secretary".

Section 801(4) of ANILCA has been construed to be read as Indian Legislation as it applies to Alaska Natives. In light of that, it is illogical that the Congress intended for sport fishing to be permitted in national parks in Alaska but not subsistence fishing.

Sealaska's Petition for Rulemaking (Tab 14, attached) sets forth our legal argument in detail, and that argument is augmented by the attached comments of the Southeast Alaska Conservation Council and the State of Alaska.

The Secretary declined to initiate a separate rulemaking proceeding on our Petition in light of the fact that our Petition could be addressed in the Federal Subsistence Board or Park Service rulemaking proceedings. Immediately thereafter, the Department issued FSB rules asserting that ANILCA closed Glacier Bay National Park to subsistence fishing and gathering. 57 Fed. Reg. 22940 (May 29, 1992).

#### CONCLUSION

In conclusion, Mr. Chairman, commercial fishing and subsistence fishing, hunting and gathering in Glacier Bay poses no threat to the Park or to the viability and sustainability of its resources, visual or otherwise, when conducted in traditional and customary ways. We would have it no other way.

We have relied on the resources of Glacier Bay for generation upon generation and have carried out subsistence activities in ways which did not jeopardize the area which is now designated as Park or its resources. If our commercial fishing and subsistence rights are recognized and protected, we would, of course, carry out those activities in cooperation with the National Park Service and the State of Alaska, as appropriate, so as not to create a threat to viable populations of fish and other resources in the area.

Further, Mr. Chairman, if we at Sealaska had thought during the development of the final shape of ANILCA in the Senate that subsistence fishing and gathering rights of our people were being compromised, we would have sought help from appropriate Members of Congress in both Houses to remedy it. Based on the strong support in the House and Senate for the subsistence rights of Native (and non-Native) people in general, it is reasonable to assume that had we requested such help in 1980 from the Merchant Marine and Fisheries Committee, the then Interior and Insular Affairs Committee, or from Chairman Jackson, Senator Stevens, Senator Tsongas, and of the Senate Energy and Natural Resources Committee and other Members of Congress playing key roles in the passage of ANILCA, to correct this problem, we would have received it. But, we did not believe that ANILCA threatened our subsistence rights. On the contrary, we thought that ANILCA protected those rights.

Regardless of whether or not you or other Members of the Subcommittee agree with our argument that the National Park Service has misinterpreted ANILCA on this point, we request that your subcommittee report a bill in this Congress which would ensure that subsistence fishing, hunting and gathering rights for our people are provided for.

Rather than subject our shareholders to potentially protracted and costly litigation to secure rights about which there should never have been any question in the first place, we have concluded that a legislative approach is the best way for our people to obtain

an equitable and expeditious resolution on this problem. We urge this Subcommittee's adoption of H.R. 704.

Thank you for the opportunity to testify before you today. We would hope that once commercial fisheries and subsistence uses of Glacier Bay are clearly restored to our people, the National Park Service will work hand-in-hand with us to appropriately interpret and celebrate the history and culture of the Tlingit people as they relates to Glacier Bay. Such an effort should not only be uplifting and of great pride to all Tlingit Indians, it would add significantly to the quality of the education and enjoyment of visitors to this magnificent national park.

The people of our region, the people of the community of Hoonah, Alaska, and I will deeply appreciate your consideration of the points I have raised and your assistance in remedying these continuing misunderstandings with and misinterpretations of law by the National Park Service. Mr. Chairman, this concludes my prepared remarks.



*T'ukdeintaan  
L'uknax.adl*

*Chookaneldi  
Kaagwanteen  
Wooshkeetsan  
Shengukeldi*

**HUNA**  
Traditional  
Tribal Council  
P.O. Box 369  
Heenah, AK 99829

May 12, 1993

To: House of Representatives, Committee on Natural Resources,  
Subcommittee on National Parks, Forests and Public Lands,  
Committee on Merchant Marine and Fisheries, Subcommittee  
on Fisheries Management

U.S. Senate Committee on Energy and Natural Resources,  
Subcommittee on Public Lands, National Parks and Forests,  
Select Committee on Indian Affairs, and

Department of Interior Executive comments requested.

The Huna Traditional Tribal Council (HTTC) of Elders wishes to submit a substitute bill to H.R. 704 and S. 291 entitled "A Bill to improve the management of certain Parks and Waters of Alaska, and to regulate fishing in certain waters of Alaska." This Bill has the potential to resolve the numerous and varied problems currently plaguing Glacier Bay National Park by organizing a structure that effectively involves all interests.

Glacier Bay is much more than an economic, scientific, and recreational resource, as recognized in the special provisions of the legislation that authorized the national monument and national conservation area. Since the beginning of time, the Huna kaaoo (clans) used and occupied "Ts'shee yei" ("drainage though the clay"), the area now known as Glacier Bay National Park. Glacier Bay holds vast cultural landscape and waters with deep special meaning to the Huna kaaoo. Archeology, glaciology, Tlingit legends, songs and grave yards clearly demonstrate our use and occupancy.

The Huna kaaoo is proposing a government-to-government management plan that recognizes the breadth of the national preservation and conservation interests and does not attempt to impose standards, guidelines, and priorities that are foreign to the values and cultures that the government is mandated to protect. An important part of the solution to the dilemma of Alaska's conservation lands lay in intensifying involvement with Alaska Native people at all levels, from top organizational

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and political leadership to the village seal hunter.

Our Customary and traditional useage of Natural Resources has been reduced to a confusing description called "subsistence." The word does not begin to describe the ways and lifestyle of a unique living culture. As a result, policy-makers are generally uncomfortable about discussing the specifics of the "subsistence" economy regarding it as outdated and unspecialized. It must be remembered that the first European contact in the 1700s found that the Tlingits were skilled traders and possessed a high sense of proprietorship over lands, waters and resources of the area they used and occupied. Hunting, fishing, trapping, bartering, and trade were historical major economic activities and principal revenue to the Tlingits of S.E. Alaska. Decision-makers have always undervalued Native culture and have grossly underestimated the vitality of the Native customary and traditional economy. Many have even doubted its existence. There is no place in America's idea of progress for the concept of a viable hunting, fishing and trade economy. The Alaskan Native village must, nevertheless, have an economic base. It is a reality that Alaska Natives continue to depend upon the land and water for their livelihood. Dependence on renewable resources continue to define village life today. The Tlingit people believe in taking animals for food and for the fur--fur for clothing and fur to be sold as valuable and functional products. For sure, traditional culture must have a material basis however, we believe most fervently in maintaining the great fish and wildlife populations. The Huna Kaaoo seeks to safeguard rights of hunting, fishing, and gathering so as to ensure the survival of customary and traditional lifeways and wisdom. Through this we will retain our distinctive identity and regain a measure of self-sufficiency. The defense of our customary and traditional lifestyles has driven our movement for tribal government restoration. We are not seeking a retreat into the past but a hard-headed assessment of the present and a guarantee for the future. We do not oppose progress but we believe we are entitled to a measure of control over the pace of development and a share in the wealth that it creates. We want a share in the decision-making over land use and be actively consulted about non-renewable resource development in order to protect renewable resources. Commercial fishing is one historic activity that we consider a major part of our customary and traditional existence. The Glacier Bay park manager has offered a solution that would recognize a "Native only" fishery right and participation that we wish to explore. We will work toward a plan that will ensure the inherent fishing rights of future generations to come.

Impact Studies. Pertinent research and impact studies will be required of any change in operations management. Amending an act of Congress that was used in the development of a general management plan would require an impact study. A plan to expand the scope of a management plan, such as ours does, would require an impact study or studies. We feel it is pertinent that all

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studies and research be eco-system focused rather than the single specie or interest impact focus, i.e. limited focus to recreational opportunities, or humpback whales only. We need to question what impacts a 71% increase of cruise ship entires has on the eco-system as a whole rather than just the whales. Is there a cruise ship oil and/or pollution plan that is adequate? Could the frigid waters of Glacier Bay disperse any mass pollution should an accident occur? What are the impacts of the NPS operations to the park resources? What is the extent of damage of the eight-year underground fuel leaks discovered last year in Glacier Bay's tank farm to the eco-system? Are there other dangers the park managers should be aware of? Is there need to develop a survey check list of all administrative facilities for pollution damage control? What impacts does the booming business of sport fishing have on the eco-system, if any? What cultural resources exist? How should should the cultural resources be handled and managed? The NPS recently found fifteen culturally modified trees and remnants of an 8'x8' wooden structure that could have been a smoke house in Bartlett Cove where they want to build new staff housing (see NPS Archeological Clearance Survey Form No. 01-92-GLBA). It is well known that Bartlett Cove was an important food processing area for the Huna kaaoo--historic properties. Glacier Bay's NPS general management plan does not contain objectives for historic properties. What are the past, present, and future impacts of customary and traditional, and sport hunting activities within and adjacent to the NPS boundaries? The NPS bans customary and traditional hunting in Glacier Bay and allows sport moose hunting in the adjacent town of Gustavus which was designated "private land" in a 1955 presidential proclamation. In March 1993, a Huna Tlingit received approved title to his family's Native allotment in Glacier Bay. This is the first settlement of 11 Native allotments claims within Glacier Bay NPS boundaries that is now in the status of "private lands" with all the rights of such. The only "private land" recognized in the Glacier Bay's general management plan is Gustavus. Is commercial harvest of migrant fish in Glacier Bay detrimental to the eco-system? What are the past, present and future impacts of commercial fishing? Specifically, what recreational activities currently occur in Glacier Bay and which are planned? What are the impacts of such activities on the eco-system? What is the projected rate of growth? Could customary and traditional activities enhance the visitor's experience? We must explore all the possibilities so as to utilize and protect all of Glacier Bay's natural resources to the best extent feasible. All these and more questions need to be answered. With 106 additional cruise ship entries planned into Glacier Bay between June 1 and August 31 annually, the question of impact through sudden growth of services has got to be priority in rational and sound management and planning.

**Management Planning.** There is a major lack of communication amongst the federal, state and tribal government entities which is primarily caused by each having their very own system, own

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experts, own way of doing things. It is time to begin a true partnership like one that has never been recognized before. The HTTC is charged with the burden of protecting traditional customary use of our ancestral homeland in accordance with the laws of Nature and traditional knowledge. The Hoonah Indian Association (IRA Council) is charged with providing various services to the tribe according to federal laws and guidelines. The plan the Huna kaaoo is offering is a balanced combination of traditional, and federal, and state laws. It is conceivable that a blend of the most appropriate and sound practices can be used to untangle the bureaucratic and operational problems plaguing Glacier Bay today. Our concern is the fragmented management policies currently being exercised that is causing bureaucratic and statutory confusion without meaningful input from the very people being directly and negatively affected. We wish to be involved in carrying out programs that go beyond the mere "identification" and "evaluation" of historic properties--as is currently called for in the 1984 Glacier Bay General Management Plan. We want to work with the NPS in developing an appropriate wilderness plan that takes into consideration the customary and traditional lifestyle and ways of the Huna kaaoo. We wish to be fully involved in the interpretation of our history. Only we can properly tell our story. Glacier Bay was Tlingit territory centuries before "discovery" by the Europeans. We were the ones who met the explorers and scientists on the beach, guided them into the unknown, showed them how to survive in the harsh elements. Some federal agencies already acknowledge a responsibility to consider more than "cultural resources" to include not only historic properties but "traditional lifeways and values" as well (ref: BLM Cultural Resource Management Manual 8100, Release 8-38, 1988).

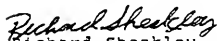
There exists a Federal Subsistence Board in Alaska, made up of officials from the BLM, NPS, FS, F&WS, and BIA. They determine "subsistence useage" on federal lands. This Board has determined that there shall be no subsistence allowed in Glacier Bay. Their current setup is negligent in providing an appeal mechanism so that local grass root concerns and ideas can be heard and seriously considered. In addition to the five agencies that make up the FSB, there are additional federal, state and tribal entities that have valid concerns about Glacier Bay, such as: NMFS, Alaska Departments of Fish & Game, Commerce and Economic Development, local city governments, conservation groups, Native corporations, and tribal governments. The Glacier Bay General Management Plan lists the objectives of meeting with these groups to include Wilderness Management Policies. The HTTC management plan defines intensive involvement of the Huna kaaoo at all levels, from top organizational and political leadership to the village seal hunter and gatherer, and will address all uses of Glacier Bay, including Wilderness. Fisheries Management under customary and traditional useage of natural resources will involve local grass-root experts, i.e. lifelong fishermen, navigators, community hunters and gatherers, other interested people. This approach will address the protection



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of the eco-system which is more involved than mere conservation protection. The Tlingit people are natural experts, scientists, of the eco-system because our very survival depends on it. Our people migrate as do fish and wildlife to go where the food is. We are a link in the food chain and our ancestors understood this. Tlingit law is derived from the harsh and strict laws and conditions of Nature. Because the Tlingit utilizes their traditional useage area twelve months a year, users can participate in the gathering of important research data. We are the eyes, ears, and users of the resources whose vast wealth of knowledge has yet to be discovered. Once this knowledge is tapped into the benefits could be as profound as the Prudoe Bay oil discovery. Federal, state, environmental groups and ourselves need to be educated on sound reasoning and rationales of management.

Our deep gratitude to Congressman Don Young, Senator Frank Murkowski, Sealaska, and the State of Alaska for bringing the existence of the Huna people to light. Their passionate support of our traditional useage of Glacier Bay has been applauded and received with a sigh of relief and glimmer of hope for the future. America is still in the Age of Discovery. And, there is still one discovery yet to be made in our own time--should we choose it--the discovery of true partnership amongst diverse groups with common interests and concerns. Our worlds have rich and powerful knowledge that, combined, could be unbeatable.



Richard Sheakley, President



Frank Wright, Jr., Secretary

**Proposed Substitute for  
H.R. 704  
and  
S.291**

**A BILL**

To improve the management of Certain Parks and Waters of Alaska, and to regulate fishing in certain waters of Alaska.

**SECTION 1. DEFINITIONS.**

For the purposes of this Act, the term "Glacier Bay National Park" means the national park and national preserve redesignated, established or expanded under section 202(1) of the Alaska National Interest Conservation Act (16 USC 410 hh-1). Huna kaaoo (clans) are: Takdeintaan, Chookaneidi, Wooshkeetaan, Kaagwaataan, L'uknax.adi, and Shangukeidi of the Tlingit Nation. The term **customary and traditional usage** has the same meaning as "subsistence uses" in § 803 of ANILCA, 16 U.S.C. § 3113.

**SECTION 2. CUSTOMARY AND TRADITIONAL USAGE OF NATURAL RESOURCES.**

Customary and traditional hunting, fishing and gathering according to Tlingit law by the Huna kaaoo shall be allowed in the traditional homeland of Glacier Bay and in accordance with the provisions of Title VIII of Alaska National Interest Lands Conservation Act (16 U.S.C. 3111 through 3126) and the National Historic Preservation Act Sec. 106 as amended (16 USC 40 et seq.) and its implementing regulations and applicable cultural resources legislation.

Customary and traditional fishing includes the historic commercial fishery of the Huna kaaoo to ensure the inherent fishing rights of our future generations.

**SECTION 3. IMPACT STUDIES**

The Secretary of the Interior, in consultation with the Huna kaaoo and the State of Alaska, shall study the ecosystem impacts of: increased tour boat entry; sport fishing;

commercial fishing; National Park Service Operations; historic properties; customary and traditional usage areas and activities; and recreational activities to determine whether these activities are having a detrimental effect on Glacier Bay resources. The Secretary shall report the results of these studies to the Committees on Merchant Marine and Fisheries; Natural Resources; U.S. Senate Select Committee on Indian Affairs; and the Senate Committee on National Parks after appropriate research and study has been completed. The research and study plan should take no more than two years and adequate funding will be appropriated to accomplish these planning goals.

#### **SECTION 4. MANAGEMENT PLANNING.**

The Secretary of the Interior, in direct consultation with the Huna kaaoo and the State of Alaska, shall sit together in forum to develop a management plan that will gain governmental cooperation with all entities charged with similar and varied responsibilities within the NPS boundaries. Adequate funding will be appropriated to accomplish this intensive management planning.

TESTIMONY OF THE ALLIED FISHERMEN OF SOUTHEAST ALASKA (AFSA)  
APRIL 28, 1993  
BEFORE THE  
SUBCOMMITTEE ON FISHERIES MANAGEMENT

RE: COMMERCIAL FISHING IN GLACIER BAY NATIONAL PARK

AFSA'S MEMBERSHIP REPRESENTS A CROSS SECTION OF THE FISHING AND COMMUNITY INTERESTS OF SOUTHEAST ALASKA, INCLUDING COMMERCIAL FISHERMEN, GEAR GROUPS, PROCESSORS, A REGIONAL AQUACULTURE ASSOCIATION, AND THE CITY OF PELICAN. AFSA WAS ORGANIZED IN 1990 IN RESPONSE TO A LAWSUIT FILED AGAINST THE NATIONAL PARK SERVICE BY THE ALASKA WILDLIFE ALLIANCE, AND AMERICAN WILDLANDS OF ENGLEWOOD, COLORADO. THE SUIT SEEKS TO DENY ACCESS TO THE HISTORIC COMMERCIAL FISHERIES THAT HAVE BEEN CONDUCTED, FOR WELL OVER A CENTURY, IN THE AREA NOW KNOWN AS GLACIER BAY NATIONAL PARK.

SINCE ITS INCEPTION, AFSA'S ROLE HAS BROADENED FROM DEFENDING THE RIGHTS OF COMMERCIAL FISHERMEN IN THE COURT ROOM TO ADVOCATING, IN ALL FORUMS, THE CONTINUATION OF THE TRADITIONAL FISHERIES WITHIN THE PARK UPON WHICH OUR COMMUNITIES AND CITIZENS RELY. AFSA IS PRIVILEGED TO RECOGNIZE THE ENDORSEMENT OF OUR EFFORTS BY SUCH DISTINGUISHED NATIVE LEADERSHIP AS THE SEALASKA CORPORATION, AND THE HIGHLY RESPECTED SOUTHEAST ALASKA CONSERVATION COUNCIL.

ALTHOUGH WE ARE MOST ACTIVE ON ISSUES OF CONCERN TO COMMERCIAL FISHERMEN, AFSA WOULD LIKE TO STATE ON THE RECORD OUR STRONG SUPPORT OF CUSTOMARY SUBSISTENCE USES IN GLACIER BAY NATIONAL PARK. WE BELIEVE THAT THESE ACTIVITIES ARE ESSENTIAL TO THE PRESERVATION OF THE CULTURAL HERITAGE AND SOCIAL WELL-BEING OF THE ALASKAN PEOPLE.

THE PROBLEM WE NOW CONFRONT IS THE LACK OF STATUTORY CLARITY REGARDING COMMERCIAL FISHING IN GLACIER BAY NATIONAL PARK. THE FILING OF A LAWSUIT AND THE SUBSEQUENT RUSH BY THE NATIONAL PARK SERVICE TO IMPOSE DRACONIAN REGULATIONS UPON ALASKAN FISHERMEN ARE INDICATIVE OF THE NEED FOR CLEAR DIRECTION FROM CONGRESS. THE RESIDENTS OF SOUTHEAST ALASKA ARE DISMAYED TO FIND THEMSELVES IN THE MIDST OF A LEGAL BATTLE ATTEMPTING TO PARRY THE HARSH REGULATORY QUEST OF PEOPLE FAR REMOVED FROM THE REALITIES OF RURAL ALASKAN LIVING.

FISHERMEN HAVE BEEN AN INTEGRAL PART OF THIS REGION'S CULTURAL FABRIC FOR MORE THAN 100 YEARS. WE BELIEVE THAT CONGRESS INTENDED TO IDENTIFY GLACIER BAY AS AN AREA WORTHY OF PRESERVING FOR FUTURE GENERATIONS DUE TO ITS UNIQUE AND DIVERSE CHARACTER. WE RECOGNIZE THE IMPORTANCE OF PRESERVING THIS NATURAL WONDER AND ARE PROUD TO BE A PART OF IT.

FISHERMEN HAVE A PROVEN RECORD AS SINCERE AND VIGOROUS ADVOCATES

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FOR THE PROTECTION OF ENVIRONMENTAL VALUES, AS YOU MAY RECALL FROM HEARINGS OF THIS COMMITTEE ON THE TONGASS NATIONAL FOREST AND THE OIL POLLUTION ACT OF 1990, AND CONGRESS GENERALLY ON THE MARINE MAMMAL PROTECTION ACT, HIGH SEAS DRIFTNETS, WETLANDS PROTECTION, AND THE LIKE.

WHEN ANILCA WAS ENACTED IN 1980, OUR FISHERMEN WERE LED TO BELIEVE THAT TRADITIONAL FISHERIES WOULD BE ALLOWED TO CONTINUE WITHIN THE PARK BOUNDARIES. TODAY, WE ARE FACING A PROHIBITION ON OUR ACTIVITIES, AND OUR WAY OF LIFE. THE SITUATION WOULD BE MORE EASILY UNDERSTOOD IF OUR FISHERIES WERE SOMEHOW DETRIMENTAL TO THE PARK RESOURCES, BUT THIS HAS NOT BEEN THE CASE.

THE SOLUTION IS SIMPLE. YOU HAVE AT YOUR DISPOSAL THE MEANS TO CLARIFY CONGRESSIONAL INTENT. WE BELIEVE IT IS VITAL FOR THE RECORD TO SHOW, UNEQUIVOCALLY, THE COMMITMENT OF CONGRESS TO PROVIDE FOR THE CONTINUED EXISTENCE OF THOSE DEPENDENT UPON GLACIER BAY NATIONAL PARK.

GLACIER BAY NATIONAL PARK SPANS 3.3 MILLION ACRES, AN AREA ROUGHLY THE SIZE OF THE STATE OF CONNECTICUT. THE WATERS OF THE PARK EXTEND FROM EXCURSION INLET TO A POINT NORTH OF CAPE FAIRWEATHER, AND INCLUDE THE WATERS TO THREE MILES OFFSHORE. THIS IS OVER HALF A MILLION ACRES OF THE MOST PRODUCTIVE FISHING GROUNDS IN SOUTHEAST ALASKA. A VARIETY OF REGIONAL FISHERIES OCCUR THROUGHOUT THE YEAR DURING REGULATED SEASONS. ALTHOUGH THE PARK WATERS MAKE UP A SIGNIFICANT PORTION OF THE TOTAL FISHING AREA AVAILABLE TO OUR FLEETS, NO FISHERIES ARE CONDUCTED EXCLUSIVELY WITHIN PARK BOUNDARIES. IN ADDITION TO FISHING OPPORTUNITY, THE PARK PROVIDES IMPORTANT REFUGE FROM THE INCLEMENT WEATHER SO COMMON IN ALASKA. IN FACT, LITUVA BAY IS THE ONLY SIZEABLE ANCHORAGE AVAILABLE TO THOSE FISHING THE NORTHERN OUTSIDE COAST.

FISHING HAS SUSTAINED THE SOUTHEAST REGION SINCE THE FIRST PEOPLE VENTURED TO ALASKA. THE PEOPLE INDIGENOUS TO GLACIER BAY, WHO ESTABLISHED THE VILLAGE OF HOONAH, HAVE RELIED ON THE RICHNESS OF GLACIER BAY'S BOUNTY SINCE TIME IMMEMORIAL. COMMERCIAL FISHING PRE-DATES THE DESIGNATION OF THE AREA AS A NATIONAL PARK IN 1980 AND A NATIONAL MONUMENT IN 1925.

PRIOR TO THE TURN OF THE CENTURY, FISHERMEN PLIED THE AREA WATERS FOR SALMON AND HALIBUT. OVER TIME, FISHERIES WERE DEVELOPED FOR CRAB, LING COD, PACIFIC COD, AND SHRIMP. RURAL COMMUNITIES SUCH AS PELICAN AND ELFIN COVE THAT WERE ESTABLISHED TO HOUSE AND SUPPORT THE FISHING FLEET, ARE THRIVING PORTS TODAY. THE FISHERIES OF GLACIER BAY NATIONAL PARK HAVE PASSED BETWEEN GENERATIONS OF FISHERMEN, YET THERE ARE FEW VISIBLE SIGNS OF DEVELOPMENT, AND FISH AND WILDLIFE ABOUND.

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MOST OF THE SPECIES TARGETED BY FISHERIES IN THE PARK ARE NOT NATIVE TO GLACIER BAY OR THE SURROUNDING WATERS. THEY COME AND GO JUST LIKE TOURISTS AND WHALES. THERE ARE NO CHINOOK SALMON SPAWNING STREAMS IN GLACIER BAY, AND HALIBUT SPAWN IN DEEP WATER FAR OFF-SHORE. SOME KING, TANNER, AND DUNGENESS CRAB DO SPAWN WITHIN PARK WATERS; HOWEVER, THE YOUNG ARE DISTRIBUTED IN LARVAL FORM VIA CURRENTS IN THE WATER COLUMN. THERE IS LITTLE EVIDENCE TO SUGGEST THAT ANY OF THESE STOCKS REPRESENT POPULATIONS UNIQUE TO THE PARK.

FISHING BOATS THAT UTILIZE THE WATERS AND RESOURCES IN AND AROUND GLACIER BAY ARE SMALL VESSELS RIGGED FOR SALMON TROLLING, SEINING, LONGLINING, OR POT FISHING. FISHERMEN EMPLOY VESSELS WHICH RANGE IN LENGTH FROM 14 TO 60 FEET, AND ARE OFTEN INVOLVED IN MULTIPLE FISHERIES. WITH FEW EXCEPTIONS, SKIPPERS AND CREWS OF THESE VESSELS ARE PROFESSIONAL FISHERMEN WHO LIVE IN CLOSE PROXIMITY TO THE PARK IN SUCH COMMUNITIES AS HOONAH, GUSTAVUS, PELICAN, ELFIN COVE, SITKA, YAKUTAT, HAINES, AND JUNEAU. SEALASKA CORPORATION RECENTLY ESTIMATED THE REGIONAL VALUE OF THE HARVEST FROM WITHIN PARK WATERS AT \$10.5 MILLION DOLLARS ANNUALLY.

SALMON TROLLING IS A HOOK AND LINE FISHERY, WHICH INVOLVES SLOWLY PULLING LURES THROUGH THE WATER. THE FISHERY OCCURS IN VARIOUS LOCATIONS IN THE PARK'S MARINE WATERS, DEPENDING ON THE TIME OF YEAR. BRIEF TWO OR THREE DAY FISHERIES ARE CONDUCTED IN THE INSIDE WATERS IN JUNE, AND ARE INTENDED TO ACCESS CHINOOK SALMON PRODUCED IN ALASKA'S HATCHERIES. THE REGION-WIDE SUMMER FISHERY FOR CHINOOK OPENS JULY 1, AND MUCH OF THE EFFORT IS CENTERED IN THE OUTER COASTAL WATERS.

TROLLING FOR COHO SALMON FOLLOWS THE SUMMER CHINOOK FISHERY AND CONTINUES THROUGH SEPTEMBER 20. MOST OF THE FLEET OPERATES IN THE OUTER COASTAL AREAS UNTIL LATE AUGUST, WHEN EFFORT SHIFTS TO THE INNER CORRIDORS AS THE FISH MAKE THEIR WAY TO STREAMS THROUGHOUT SOUTHEAST. CHINOOK AND COHO MAKE UP THE GREATEST PART OF THE TROLL HARVEST, BUT THE PARK WATERS ALSO PROVIDE IMPORTANT SUMMER ACCESS TO PINK AND CHUM SALMON.

THE WINTER TROLL FISHERY FOR CHINOOK RUNS OCTOBER 11 THROUGH APRIL 15. AT THIS TIME, THE PROTECTED WATERS OF GLACIER BAY PROPER BECOME VERY IMPORTANT TO RESIDENTS OF THE SURROUNDING AREA, WHO DEPEND ON THIS FISHERY AS THEIR PRIMARY SOURCE OF WINTER EMPLOYMENT. 86 PERCENT OF THE SOUTHEAST TROLL PERMIT HOLDERS ARE ALASKAN RESIDENTS; 39 PERCENT, OR ROUGHLY 1000 OF THEM LIVE IN RURAL ALASKA. EMPLOYMENT OPPORTUNITIES ARE FEW IN OUR REGION.

MANY OF THE SALMON HARVESTED BY TROLLERS IN THE PARK ARE PRODUCED IN SOUTHEAST ALASKA HATCHERIES. FUNDING FOR THESE HATCHERIES COMES MOSTLY FROM A FISHERMEN'S VOLUNTARY ASSESSMENT PROGRAM, BUT IN PART FROM MONIES AUTHORIZED BY CONGRESS TO MITIGATE THE LOSSES OF

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ALASKAN FISHERMEN UNDER THE U.S./CANADA SALMON TREATY. ROUGHLY 15 PERCENT OF THE TROLL HARVEST IN PARK WATERS CAN BE ATTRIBUTED TO ALASKA'S ENHANCEMENT PROGRAM. SALMON FROM HATCHERIES OUTSIDE OF ALASKA ARE ALSO CAPTURED WITHIN THE PARK. OVERALL, ABOUT 35 PERCENT OF THE TOTAL AREA CHINOOK HARVEST EACH YEAR COMES FROM THE COLLECTIVE ENHANCEMENT EFFORTS OF ALASKA, THE LOWER 48, AND BRITISH COLUMBIA.

HALIBUT FISHERMEN SET AND RETRIEVE BAITED HOOKS ATTACHED TO LONGLINES LAID ALONG THE SEABED. THE HALIBUT FISHERY IS REGULATED ACCORDING TO REGIONAL QUOTAS ESTABLISHED BY THE INTERNATIONAL PACIFIC HALIBUT COMMISSION, UPON THE RECOMMENDATION OF ITS SCIENTIFIC STAFF. THE QUOTAS ARE BASED ON A BIOLOGICAL ASSESSMENT OF THE HEALTH OF THE HALIBUT RESOURCE IN EACH REGION. HALIBUT SEASONS ARE VERY BRIEF, CONSISTING OF TWO OR THREE 24-HOUR PERIODS EACH YEAR. THE FIRST OPENING OF THE SOUTHEAST ALASKA HALIBUT FISHERY TYPICALLY OCCURS BETWEEN LATE APRIL AND EARLY JUNE, WITH A SECOND PERIOD BETWEEN LATE AUGUST AND OCTOBER.

CRAB FISHERMEN SELECTIVELY PLACE BAITED POTS ON THE SEABED. THE SUMMER SEASON FOR DUNGENESS EXTENDS FROM JUNE THROUGH AUGUST, AND OCCURS IN SELECTED LOCATIONS WITHIN GLACIER BAY AND ALONG THE OUTSIDE COAST. WINTER FISHERIES FOR DUNGENESS AND TANNER CRAB ARE CONDUCTED IN GLACIER BAY AND THE ADJOINING INSIDE WATERS. THE DUNGENESS FISHERY TAKES PLACE OCTOBER 1 THROUGH MID-DECEMBER. THE TANNER CRAB FISHERY IS MANAGED UNDER A QUOTA SYSTEM, AND IS USUALLY CONDUCTED THE LAST TWO WEEKS OF FEBRUARY. A SMALL POT FISHERY FOR SHRIMP TAKES PLACE ONLY IN LITUVA BAY ON THE OUTSIDE COAST.

PURSE SEINE OPERATORS EMPLOY A NET TO ENCIRCLE SCHOOLS OF FISH. AN IMPORTANT SEINE FISHERY FOR CHUM SALMON OCCURS IN AND AROUND EXCURSION INLET IN AUGUST AND SEPTEMBER.

TODAY, THE ROBUST HEALTH OF FISHERY STOCKS IN SOUTHEAST ALASKA IS DIRECTLY ATTRIBUTABLE TO THE CAREFUL MANAGEMENT PRACTICES OF THE ALASKA BOARD OF FISHERIES AND THE ALASKA DEPARTMENT OF FISH AND GAME, IN COOPERATION WITH THE INTERNATIONAL HALIBUT COMMISSION AND THE PACIFIC SALMON COMMISSION. THE TROLL CHINOOK FISHERY IS MANAGED ON THE BASIS OF AN ANNUAL QUOTA ESTABLISHED BY THE PACIFIC SALMON COMMISSION, WHICH IS THE IMPLEMENTING BODY OF THE PACIFIC SALMON TREATY. COHO SALMON ARE MANAGED ON IN-SEASON ASSESSMENTS OF RUN STRENGTH, WITH ADJUSTMENTS TO TIME AND AREA FISHED, IN ORDER TO MEET THE STATE'S GOAL OF SUSTAINED YIELD MANAGEMENT. KING AND TANNER CRAB HARVESTS ARE REGULATED TO AN ANNUAL QUOTA, AND DUNGENESS CRAB FISHING IS LIMITED TO A SET SEASON LENGTH.

FISHERMEN ARE SUPPORTIVE OF THE EFFORTS OF THESE AGENCIES AND PUT GREAT STOCK IN THE PRACTICE OF SUSTAINED YIELD MANAGEMENT. BECAUSE WE ARE INTIMATELY LINKED TO THE RESOURCE AND ITS CONTINUED HEALTH, WE SUPPORT BOTH CONSERVATIVE MANAGEMENT PRACTICES AND MEASURES THAT

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PROTECT THE CRITICAL HABITAT NECESSARY FOR FISH PRODUCTION. WE KNOW THAT WHAT IS GOOD FOR FISH IS GOOD FOR FISHERMEN.

THE POTENTIAL CLOSURE OF HEALTHY AND PRODUCTIVE FISHING AREAS, THE SECRETS OF WHICH MAY HAVE BEEN PASSED ON WITHIN FAMILIES FOR GENERATIONS, POSES THE ULTIMATE THREAT TO A FISHERMAN. THE REAL WORLD OF FISHING DOES NOT WORK THE WAY THE NATIONAL PARK SERVICE SO GLIBLY INTIMATED IN ITS RECENTLY PROPOSED REGULATIONS. THE PARK SERVICE CLAIMS THAT FISHERMEN CAN PICK UP AND GO SOMEWHERE ELSE, JUST LIKE THAT. THIS IS LIKE SAYING THAT ANY OF YOU COULD MOVE TO ANOTHER STATE TOMORROW AND BE ELECTED WITHOUT ANY TROUBLE! THE PARK SERVICE ALSO STATES THAT THEY EXPECT COMMERCIAL FISHERMEN TO CONTINUE TO FISH IN THE PARK WATERS FOR THE NEXT SEVEN YEARS, WHILE AT THE SAME TIME AMORTIZING THEIR EQUIPMENT AND/OR ADJUSTING THEIR FISHING OPERATIONS TO OTHER FISHING GROUNDS. THIS IS AN ABSURD NOTION; REFLECTING BUREAUCRATIC ARROGANCE AND IGNORANCE OF THE REALITIES OF FISHING.

FISHERMEN ARE SMALL BUSINESSMEN WHOSE SUCCESS IS DIRECTLY DEPENDENT UPON THEIR KNOWLEDGE OF THE WATERS THEY FISH. IT IS NO SIMPLE MATTER TO RELOCATE A FISHING OPERATION; THERE IS MUCH MORE INVOLVED THAN PILOTING THE BOAT TO ANOTHER LOCATION AND PROCEEDING TO FISH. LEARNING NEW FISHING GROUNDS DURING BRIEF AND INTENSELY COMPETITIVE FISHERY OPENINGS, AT MINIMUM, INVOLVES A LONG PERIOD OF ADJUSTMENT. THE POTENTIAL FOR CONFLICTS WITH EXISTING USERS IS HIGH. CLOSURE OF SUCH A VAST AREA WOULD MEAN CROWDING OF OTHER GROUNDS, LOCALIZED OVERFISHING, SHORT-TERM LOSSES FOR FISHERMEN, AND LONG-TERM LOSS OF ECONOMIC EFFICIENCY FOR THE FLEET AS A WHOLE.

SOME INTEREST GROUPS HAVE RAISED CONCERNS ABOUT THE EFFECT OF VESSEL NOISE ON THE BEHAVIOR OF HUMPBACK WHALES. WHILE CONFLICTING OPINIONS ABOUND REGARDING THE EFFECT OF TRAFFIC BY LARGE SHIPS OR SMALL, HIGH SPEED BOATS ON WHALES, GENERAL AGREEMENT IS THAT FISHING ACTIVITY DOES NOT INTERFERE WITH WHALES IN SOUTHEAST ALASKA. STUDIES CONDUCTED BY THE PARK SERVICE AND THE NATIONAL MARINE FISHERIES SERVICE (NMFS) DEMONSTRATE THAT FISHING VESSEL OPERATIONS DO NOT CHANGE WHALE BEHAVIOR, AS NOTED IN THE APRIL 18, 1984 FEDERAL REGISTER (VOL. 49, NO.76):

At Point Adolphus, across Icy Strait from Glacier Bay, seven to ten whales were observed each day from July 9 to August 15, 1982. The area was documented by Wing and Krieger (1983) to be one of considerable prey abundance. Whales continued feeding in the area, although the area often was occupied by up to a dozen slow moving (1-2 knots) commercial salmon trolling boats and occasionally was traversed by private, excursion, and research craft. At times, the whales were only tens of meters away from fishing boats and apparently were undisturbed (Baker, 1983). This type of interaction between vessels and whales has been observed casually throughout



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Southeast Alaska.

THESE FINDINGS AGREE WITH THE EXTENSIVE EXPERIENCE OF FISHERMEN IN OTHER AREAS IN SOUTHEAST ALASKA, WHERE GREATER CONCENTRATIONS OF WHALES AND MORE INTENSIVE FISHERIES CO-EXIST WITH LITTLE OR NO CONFLICT. AS TROLLER PHIL EMERSON OF FUNTER BAY RECENTLY WROTE:

During the silver salmon season this is a popular trolling area and I have been with a fleet of 30 or more boats here while a dozen or more humpback whales swam, fed and breached around us...

While traveling in a boat at 8 knots one is able to observe quite a bit. Almost every time I leave my home bay I am joined by a school of Dall porpoises. They play in my bow wake, zoom back and forth under my boat for awhile and then return to whatever they were doing. Earlier this year I had 30 killer whales follow my boat for over an hour; they did not frolic like the porpoises do, but a number of them swam within 10 ft of my boat all this time. I have been amazed at times to find a humpback traveling right beside me maintaining the same speed and staying 30 feet off my beam. I have come by Point Adolphus and seen humpbacks milling perhaps a half mile from me and before I know it they have changed course and are headed in my direction only to dive under the boat in a playful manner...

FOR THE MOST PART, WHALES ARE NOT PRESENT IN GLACIER BAY DURING KEY FISHING PERIODS. WHALES FREQUENT THE PARK FOR A VERY BRIEF PERIOD BETWEEN MID-JUNE AND LATE AUGUST, EACH YEAR. DURING THIS TIME-FRAME, FISHING IS CONCENTRATED ALONG THE OUTSIDE COAST. THUS, THE WHALE SEASON IN GLACIER BAY OVERLAPS ONLY MINIMALLY WITH COMMERCIAL FISHING ACTIVITY. THE COMBINATION OF WHALES AND COMMERCIAL FISHING IN THE PARK DOES NOT CONSTITUTE AN ISSUE FROM ANY INFORMED PERSPECTIVE.

NOR IS THERE AN OBJECTIVE BASIS FOR CLAIMS THAT FISHING ACTIVITY IN THE PARK DETRACTS FROM THE VISITOR EXPERIENCE. TO THE CONTRARY, TOURISTS FREQUENTLY EXPRESS INTEREST AND DELIGHT WHEN THEY MAKE CONTACT WITH FISHERMEN. MANY VISITORS HAVE STATED THAT THEY ARE MORE COMFORTABLE WHEN THEY SEE FISHING VESSELS IN REMOTE AREAS, PARTICULARLY IN FOUL WEATHER. THE ALASKAN WILDERNESS CAN BE UNFORGIVING, AND MANY TIMES PEOPLE HAVE ENCOUNTERED DIFFICULTY WHILE TRAVELING ALONE IN THE PARK AND RECEIVED CRUCIAL ASSISTANCE FROM FISHERMEN. WE CONTEND THAT FOR TOURISTS, VIEWING GLACIER BAY AND INTERACTING WITH THE COMMERCIAL FISHING COMMUNITY ARE POSITIVE AND WHOLLY COMPATIBLE ASPECTS OF THEIR ALASKA EXPERIENCE.

WE FIND IT DIFFICULT TO UNDERSTAND WHAT MOTIVATES THE EFFORT TO TERMINATE PRODUCTIVE AND ECOLOGICALLY SOUND FISHERIES. NO

AFSA Testimony HR 704

SYSTEMATIC CHANGES IN FISHING PATTERNS HAVE TAKEN PLACE; NO DEMONSTRATIONS OR PLAUSIBLE ASSERTIONS OF NEGATIVE EFFECTS BY COMMERCIAL FISHING HAVE BEEN OFFERED. CLOSING THE PARK TO COMMERCIAL FISHING WOULD IMPOSE EXTREME HARDSHIPS UPON THE RESIDENTS OF SOUTHEAST ALASKA WHO DO NOT HAVE PRACTICAL ECONOMIC ALTERNATIVES AND WHO HAVE A DIRECT INTEREST IN PROMOTING THE VALUES WHICH ARE THE ESSENCE OF GLACIER BAY. IN ALL RESPECTS, COMMERCIAL FISHING IS COMPATIBLE WITH PARK VALUES AND PURPOSES. FIRST, FISHING IS CONDUCTED IN A MANNER WHICH MAINTAINS THE HEALTH OF THE PARK'S MARINE RESOURCES. SECONDLY, FISHING ENHANCES THE ALASKAN EXPERIENCE OF TOURISTS WHO VISIT THE PARK. AND FINALLY, WHEN A FISHERY IS CONCLUDED THERE IS NO SIGN THAT HUMANS WERE IN THE AREA. COMMERCIAL FISHING IS, AND ALWAYS HAS BEEN, PART OF GLACIER BAY NATIONAL PARK.

OUR NATIONAL PARKS ARE DEFINED BY THEIR UNIQUENESS, AND GLACIER BAY IS NO EXCEPTION. THE AREA IS INACCESSIBLE BY LAND TRANSPORTATION OF ANY KIND AND ITS PECULIAR HISTORY OF USE IS AS DISTINCTIVE AS ITS MARVELOUS ARRAY OF GLACIERS AND SUPERB TRANSITION VEGETATION. IT IS THAT HISTORY OF USE WHICH IS AT ISSUE NOW. FISHING IN WHAT HAVE BECOME GLACIER BAY NATIONAL PARK WATERS WAS A STABLE AND INTEGRAL PART OF THE AREA WHEN IT WAS DESIGNATED FOR NATIONAL MONUMENT STATUS IN 1925, AND HAS REMAINED SO TO THIS DAY. THE BILL BEFORE THIS COMMITTEE IS NOT INTRODUCING COMMERCIAL FISHING INTO A PARK WHICH IS NAIVE TO SUCH ACTIVITIES AND FROM WHICH IT MIGHT BE THREATENED; FISHING HAS TAKEN PLACE HERE FOR NEARLY A CENTURY WITH NO ILL-EFFECT. TODAY IT IS THE FISHERY AND OUR CITIZENS THAT ARE THREATENED, NOT THE PARK.

THE STATUTORY DEBATE REGARDING COMMERCIAL FISHING IN GLACIER BAY NATIONAL PARK MUST BE RESOLVED THROUGH LEGISLATION AFFIRMING CONGRESSIONAL INTENT TO PROVIDE FOR THE HISTORIC FISHERIES OF THE PARK. WE REQUEST THAT SUCH AUTHORIZATION BE RESTRICTED TO THIS PARK'S MARINE WATERS, AND LIMITED TO THOSE FISHERIES WHICH ARE ALREADY OCCURRING WITHIN PARK BOUNDARIES. HOPEFULLY, THIS COMMITTEE AND THE FULL CONGRESS WILL RECOGNIZE THAT PROVIDING FOR THESE TRADITIONAL FISHERIES NOT ONLY ENSURES THE WELL-BEING OF OUR LOCAL CITIZENS, BUT CAN ALSO SECURE THE NATION'S INTEREST BY PRESERVING THE UNIQUE CHARACTER OF GLACIER BAY NATIONAL PARK. WE APPEAL TO YOUR WISDOM TO ENACT LEGISLATION AS A CLEAR STATEMENT THAT THE CIRCUMSTANCES PECULIAR TO GLACIER BAY JUSTIFY THE COMPATIBILITY OF THESE FISHERIES WITH THE VALUES AND PURPOSES OF THE PARK.

# SIERRA CLUB



408 C Street, N.E. Washington, D.C. 20002 202-547-1141

April 27, 1993

Hon. Thomas Manton, Chairman  
Subcommittee on Fisheries Management  
Committee on Merchant Marine and Fisheries  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Manton:

On behalf of the Sierra Club, a national environmental organization of more than 600,000 members, I welcome this opportunity to submit a statement for the record of the April 28 hearing on H.R. 704. This bill by Rep. Young would authorize commercial fishing in non-wilderness waters of Glacier Bay National Park, and subsistence fishing and gathering in all waters and on all lands of the park.

### Commercial fishing

In summary, our position on H.R. 704 has not changed since our testimony last session on Congressman Young's similar bill (H.R. 3418).<sup>1</sup> At that time we summarized our position as follows:

We recommend that the Subcommittee direct the Park Service to (1) phase commercial fishing out of Glacier Bay proper and (2) permit traditional commercial fisheries at existing levels in the park's offshore waters during a two-year study of the effect of fishing on park resources. The Park Service would report to the [Fisheries and Wildlife Conservation and the Environment] Subcommittee, and to the Subcommittee on National Parks and Public Lands, to which this bill is jointly referred, for the resolution of this conflict.

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<sup>1</sup> Testimony of Jack Hession, Alaska Representative Sierra Club, on H.R. 3418 before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, June 9, 1992.

"When we try to pick out anything by itself, we find it hatched to everything else in the universe" *John Muir*  
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### Subsistence fishing and gathering

Subsistence fishing, gathering, hunting, and trapping are prohibited by the Alaska National Interest Lands Conservation Act of 1980, which reaffirmed then-existing federal law and long-standing National Park Service policy. Current Interior Department subsistence management regulations for all federal lands and waters in Alaska list Glacier Bay and three other national parks in Alaska as closed to subsistence activities.

Should the Subcommittee decide to take up the question of subsistence, we recommend that it investigate the massive clear-cutting on east Chichagof Island by the Forest Service, Alaska Pulp (a wholly-owned subsidiary of Japanese corporations), and the Hoonah and Sealaska Native corporations. Much of the pressure for opening Glacier Bay National Park to subsistence is coming from the residents of Hoonah, a predominantly Tlingit village on east Chichagof, and from Sealaska.

Subsequent to the Committee's consideration last year of Rep. Young's H.R. 3418 on Glacier Bay fishing issues, a suppressed report on Tongass National Forest timber management came to light that bears directly on the subsistence question in the general area of Glacier Bay National Park and Preserve.<sup>2</sup>

Written by an interagency team of wildlife biologists for the forthcoming Tongass Land Use Management Plan revision, the report recommends the creation of "habitat conservation areas" (HCA) on the forest to maintain 11 species that depend on old-growth forest. (Although Sitka black-tail deer is not of the 11 species, the habitat areas would serve to protect vitally important deer habitat as well). No commercial logging would be allowed in the HCA's.

Five HCA's on northeast Chichagof Island cover portions of the Native village of Hoonah's "core" subsistence deer hunting areas. As no-logging areas, the HCA's would serve to protect Hoonah's subsistence interests, because deer is a mainstay of the subsistence economy. Salmon streams vital to the subsistence way of life would also benefit from the retention of the old growth forest.

A 1990 report by the Subsistence Division of the Alaska Department of Fish and Game found that the extensive clear-cutting has led to a steady reduction in the number of deer killed by Hoonah subsistence hunters. In addition to the loss of

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<sup>2</sup> Suring, Lowell H., et. al., Report of an Interagency Committee: A Strategy for Maintaining Well-distributed, Viable Populations of Wildlife Associated with Old-Growth Forests in Southeast Alaska, Review Draft, Juneau, Alaska. April 1992.

fish and wildlife habitat, especially deer wintering areas, the logging has allowed loggers and off-island sport hunters to use the network of logging roads for deer hunting in direct competition with local subsistence hunters.

This forest habitat destruction is probably largely responsible for the pressure by Hoonah and Sealaska to open the park to subsistence fishing and gathering, with hunting and trapping the next step. (Congressman Young's original bill, H.R. 3418, called for the park to be open to all forms of subsistence).

We recommend that the Subcommittee cooperate with the House Natural Resources Committee in an effort to protect the local subsistence economy by reforming forest management on Chichagof Island. For example, a legislative designation of Land Use Designation II (no logging) for the 5 HCA's on east and northeast Chichagof would go a long way towards achieving that goal.

#### Glacier Bay Becomes World Heritage Site

In our testimony before the Subcommittee on Fisheries and Wildlife Conservation and the Environment last June, we emphasized the unique qualities of Glacier Bay National Park, particularly its status as a marine wildlife sanctuary whose waters are wholly federally owned. This ownership, which is found nowhere else in the national park system, allows the Park to provide equal protection and complementary management for marine and terrestrial wildlife.

In December 1992, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) declared Glacier Bay National Park and Preserve to be a World Heritage Site. UNESCO based its action on the findings of the International Union for the Conservation of Nature (IUCN), which in its technical evaluation of the world heritage site nomination listed Glacier Bay's qualities:

- the breadth of the display of active natural processes (tectonic, volcanic, glacial, fluvial, aeolian, mass wasting, soil formation, plant succession, animal migration;
- the combination of spectacular marine, coastal, wild river, and high mountain scenery;
- the diversity and abundance of habitat for wildlife and fisheries (resident and migratory, marine and terrestrial;
- the minimal extent of human modification, paucity of permanent human settlement, and pristine wilderness qualities; and
- the quality and amount of research that

has been conducted on both the Alaska  
and Yukon sides.<sup>3</sup>

Under "Integrity," IUCN noted that "legislation gives management of the ocean waters and the bottom of the Bay and the outer coastal fringe to the National Park Service. This provision is an unique one and greatly enhances integrity."<sup>4</sup>

The IUCN identified four "threats" to the park's integrity:

- illegal commercial fishing in wilderness waters;
- the impact of tour boats on wildlife of Glacier Bay, particularly the humpback whale;
- native Huna Tlingit claims to subsistence harvesting rights within the park; and
- existence of a 80 ha mining claim on the Brady Ice Field.<sup>5</sup>

Two of these threats--commercial fishing, and subsistence claims--would be approved by H.R.704. If this were to happen, the park would be harmed, and its status as a World Heritage Site placed in jeopardy. Accordingly, we urge the Subcommittee not to legalize these threats, but instead address the issue for which the Merchant Marine and Fisheries Committee has clear jurisdiction, that of tour boat, cruise ship, and other vessel disturbance of the endangered humpback whales in non-park waters of Icy Strait adjacent to Glacier Bay.

National Park Service biologists monitoring the whales in park waters have witnessed the disturbance of the whales in the adjacent non-park waters of Icy Strait by vessels engaged in whale watching. Noting the complete absence of enforcement of regulations against harassment of the whales, the Park Service has documented the pursuit of whale groups by some vessels, including the separation of cows and calves.<sup>6</sup>

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<sup>3</sup> World Heritage Nomination - IUCN Technical Evaluation 626: Glacier Bay National Park and Preserve (U.S.A.), (extension to existing Wrangell-St. Elias-Kluane site), IUCN, 1992.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Gabriele, Christine M., Population Characteristics of Humpback Whales (*megaptera novaeangliae*) in Glacier Bay and Adjacent Waters, Glacier Bay National Park and Preserve, Gustavus, Alaska, September 1991

In 1992, the National Marine Fisheries Service issued draft regulations governing the activities of vessels engaged in watching whales and other marine mammals in all U.S. waters. Whales are not to be approached closer than 100 yards under the proposed rules.

In commenting on the draft regulations, the National Park Service noted that the proposed regulations were weaker than the Park Service's rules for vessels in Glacier Bay, which, for example, require vessels to stay at least one-quarter mile away from the whales. Recommending that the NMFS regulations be consistent with its own, the Park Service observed that:

Studies that we are aware of indicate that approaching whales to within 100 yards may cause behavioral changes. In fact, many of these studies suggest that behavioral effects (i.e., disturbance) on whales can occur at much greater distances [various studies cited]. Because existing NMFS regulations prohibit disturbance or harassment of whales, these studies would suggest that many individuals following the 100 yards guideline could unknowingly be guilty of harassment. This has the appearance of setting the general boating public up for an entrapment situation.<sup>7</sup>

This Subcommittee can contribute to the welfare of the humpback whales, and to the purposes of Glacier Bay National Park, by encouraging the National Marine Fisheries Service to adopt whale watching regulations for the Southeast Alaska population of humpback whales that complement the Park Service regulations for vessels in Glacier Bay, and that provide the maximum degree of security from harassment for these endangered creatures elsewhere in Southeast waters.

Beyond the regulations, we think the time has come to establish an Icy Strait humpback whale national marine sanctuary. Icy Strait is a critically important feeding area for the whales. Other marine mammals such as the threatened Steller sea lion, and sea otters, would also benefit from the establishment of a sanctuary.

Last year the Hawaiian Islands Humpback Whale National Marine Sanctuary was established for the purpose of protecting the whales and their wintering and breeding grounds. Members of this same population spend their summers in Southeast Alaska waters, including Glacier Bay and Icy Strait. An Icy Strait sanctuary

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<sup>7</sup> National Park Service, Glacier Bay National Park, letter to National Marine Fisheries Service, February 5, 1993, p. 1.

would complement the Hawaiian sanctuary by bringing comparable protection to the whales while in their summer feeding grounds.

We recommend that the Subcommittee encourage the administration to establish an Icy Strait humpback whale national marine sanctuary. In this way the Subcommittee and the full Committee would be promoting the welfare of the whales and the purposes of Glacier Bay National Park. We urge you to take positive action on behalf of the whales and the park.

We also encourage the Committee to investigate other threats to the integrity of Glacier Bay National Park and Preserve, such as the potential destruction of the fishery in the Alsek River and Dry Bay by mine acid drainage from the proposed Windy Craggy open-pit copper mine just above the confluence of the Tatshenshini River with the Alsek River. The lower Alsek flows through the Glacier Bay Wilderness to empty into Dry Bay in the national preserve portion of the park, where both commercial and subsistence fishing occurs.

Thank you for this opportunity to offer our views on H.R. 704.

Sincerely,

Jack Hession  
Alaska Representative





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## United States Department of the Interior

### NATIONAL PARK SERVICE

P.O. BOX 37127  
WASHINGTON, D.C. 20013-7127  
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Honorable Bruce F. Vento  
Chairman, Subcommittee on National Parks  
and Public Lands  
Committee on Interior and Insular Affairs  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Vento:

Thank you for your letter of December 9, 1991, concerning proposed National Park Service (NPS) regulations regarding commercial and subsistence fishing in Glacier Bay National Park (GLBA).

Neither the statutory language of the Alaska National Interest Lands Conservation Act (ANILCA), nor the NPS Organic Act, expressly address commercial fishing in the park. However, commercial fishing in designated wilderness was precluded by the Wilderness Act of 1964, which states that all commercial enterprises, with the exception of those providing visitor recreational services, are prohibited.

NPS regulations prohibited commercial fishing in marine waters of park areas in 1983. Nevertheless, this prohibition was not enforced in GLBA and commercial fishing activities have continued to the present. Complicating the issue of commercial fishing in Glacier Bay are: (1) the fact that commercial fishing was actually expressly authorized by NPS regulations through 1966; (2) the General Management Plan (GMP) for the park, finalized in 1984, acknowledges the continued allowance of traditional forms of commercial fishing; and, (3) while protection regulations promulgated in 1985 acknowledge the practice of commercial fishing in Glacier Bay proper. Given the fact that the Secretary of the Interior and the NPS are not statutorily prohibited from allowing commercial fishing in the NPS area (except in wilderness), and the fact that commercial fishing has been allowed to continue and been acknowledged by the NPS in GLBA, we formulated the current regulatory approach to address the problem.

Contrary to statements of The Wilderness Society, the proposed regulations do not allow for any continuance of commercial fishing beyond the proposed exemptive time period. The research studies which are discussed in the preamble to the regulations are intended to reveal the relationship of past and present commercial fishing to protection of park resources and values. That information is of inherent value to better park management and, as stated, will also be available to the agency and Congress in the event that further regulatory or legislative adjustments are contemplated to authorize any future level of commercial fishing activity. The NPS, however, merely considers the current exemptive time period to constitute an equitable adjustment period for existing commercial fishing, justified by the aforementioned extenuating circumstances. We also expect that efforts to lobby for the authorization of commercial fishing beyond the exemptive period will continue, on both the administrative and legislative levels. Consequently, the information revealed by the studies will prove valuable.

Honorable Bruce F. Vento

2

It is our opinion that ANILCA prohibits all subsistence use of the park portion of GLBA. While the act directs the Secretary of the Interior to provide for subsistence use of several designated park areas in Alaska, it does not designate the park portion of GLBA as open to such use. Furthermore, the legislative history of the act reveals that Congress clearly directed subsistence activities to be allowed in the preserve (Dry Bay/Alsek River area), but not in the park.


Unlike the circumstances surrounding commercial fishing in the park from 1925 until the present, subsistence fishing has not been openly, consistently, or continually practiced. Also unlike the situation regarding commercial fishing, local residents have not been sent mixed messages regarding subsistence use. Since at least 1980, in its rulemakings and development of the GLBA GMP, the NPS has consistently rebuffed suggestions that subsistence is allowed in the park. Furthermore, as previously stated, we do not feel that the agency or the Department has the legal authority to provide for such use. Nevertheless, we understand the cultural importance of special fishing privileges to the local Native Tlingit people with historic and cultural ties to the park. Consequently, we have stated that we would be willing to consider non-ANILCA legislation that would provide for special limited fishing privileges for local Native Tlingit people with historic and cultural connections to the park area.

We enclose a copy of the regulatory proposal in the event you or your staff may wish to further review our statements. We are currently in the process of evaluating the comments received on the proposal, including those of The Wilderness Society and Sealaska Corporation, and recognize the valid points made in many of those comments. Those points will be further addressed in the final rulemaking.

Should you or your staff have additional questions regarding our actions on this matter, please feel free to contact Tony Sisto of the Ranger Activities staff here in Washington at (202) 208-7673 or Lou Waller or John Hiscock in the Alaska Regional Office at (907) 257-2646.

We appreciate your comments on the management of the National Park System.

Sincerely,

  
James M. Ridenour  
Director

Enclosure

Carol A. Jensen  
 8451 Greenhill Way  
 Anchorage, Alaska 99502  
 (907) 344-7078

May 7, 1993

House Merchant Marines &  
 Fisheries Committee  
 FISHERIES MANAGEMENT SUBCOMMITTEE  
 U. S. House of Representatives  
 Washington, D. C.

Gentlemen:

RE: Glacier Bay, Alaska

There are NO areas in Alaska that are closed to subsistence hunting and fishing. Even the areas that are supposed to be closed (such as Glacier Bay) have not been, in direct violation of the law. Please do not be fooled into thinking "subsistence" is just a handful of natives taking a few of nature's critters. It used to be, but now subsistence is comprised of many large-scale commercial fishing and guiding operations. The take by subsistence fishermen is very significant. Driftnet, gillnet, crabbing, and set-net fishing on a large-scale commercial basis is the norm. The impact on the entire marine life of Glacier Bay will be at risk from overfishing, as will be the mammal populations of seals, whales, porpoise, etc. if you legalize commercial fishing and increase tourism traffic in the Bay.

Alaska's wildlife and marine resources have been on a steady decline for the past several years. The herring population in many places is sick and/or dying at an alarming rate, and biologists can't seem to discover the cause or remedy. Yet our Fish & Game Department continues to allow herring harvests as large as the fishermen can haul in. The herring decline is directly tied to the starvation problem we have with our marine mammal and some of our waterfowl populations. Overfishing of other species also has contributed to the marine mammal decline that now threatens the very existence of some species.

The pollution (water, air and noise) of fishing and tourism vessels has been well documented and indications are that it is obviously detrimental to marine life. Allowing the commercial fishing to continue and increase (as other parts of the state are "fished out") will only hasten the decline of all marine life in this important sanctuary. It will also adversely affect land wildlife that depend on fish for food, thereby affecting the rest of the food chain, on up to humans who depend on the land mammals.

WE MUST BEGIN TO TAKE CARE OF OUR PRECIOUS MARINE LIFE. IF WE DON'T START NOW, SOON IT WILL BE TOO LATE. FUTURE GENERATIONS WILL BE LEFT WITH NOTHING BUT "DEAD SEAS".

Thank you for your attention and consideration.

Sincerely,

  
 Carol Jensen

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